

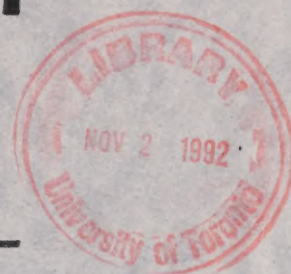
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EA-87-02



# ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 397

DATE: Monday, October 19, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

**FARR &**  
ASSOCIATES  
REPORTING INC.

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable  
Jim Bradley, Minister of the Environment,  
requiring the Environmental Assessment  
Board to hold a hearing with respect to a  
Class Environmental Assessment (No.  
NR-AA-30) of an undertaking by the Ministry  
of Natural Resources for the activity of  
Timber Management on Crown Lands in  
Ontario.

-----  
Hearing held at the Civic Square,  
Council Chambers, 200 Brady Street,  
Sudbury, Ontario on Monday, October  
19, 1992 commencing at 9:00 a.m.

-----  
VOLUME 397

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member







A P P E A R A N C E S

MR. V. FREIDIN, Q.C.	)	MINISTRY OF NATURAL
MS. C. BLASTORAH	)	RESOURCES
MS. K. MURPHY	)	
MR. B. CAMPBELL	)	
MS. J. SEABORN	)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE	)	
MR. R. TUER, Q.C.	)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN	)	ASSOCIATION and ONTARIO
MS. E. CRONK	)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY	)	ASSOCIATION
MR. D. HUNT	)	
MR. R. BERAM		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA	)	ONTARIO FEDERATION
DR. T. QUINNEY	)	OF ANGLERS & HUNTERS
MR. D. O'LEARY		
MR. D. HUNTER	)	NISHNAWBE-ASKI NATION
MR. M. BAEDER	)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK	)	FORESTS FOR TOMORROW
MR. R. LINDGREN	)	
MR. D. COLBORNE	)	GRAND COUNCIL TREATY #3
MR. G. KAKEWAY	)	
MR. J. IRWIN		ONTARIO METIS & ABORIGINAL ASSOCIATION
MS. M. HALL		KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY





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APPEARANCES (Cont'd):

MR. R. COTTON		BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS	)	ONTARIO TRAPPERS
MR. R. BARNES	)	ASSOCIATION
MR. P. ZYLBERBERG	)	NORTHWATCH COALITION
MS. B. LLOYD	)	
MR. J.W. ERICKSON, Q.C.)		RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK	)	MUNICIPAL COMMITTEE
MR. D. SCOTT	)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR	)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL		GREAT LAKES FOREST
MR. S.M. MAKUCH		CANADIAN PACIFIC FOREST PRODUCTS LTD.
MR. D. CURTIS	)	ONTARIO PROFESSIONAL
MR. J. EBBS	)	FORESTERS ASSOCIATION
MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY







APPEARANCES (Cont'd):

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

ARGUMENT

Page No.

Freidin

68071





1 ---Upon commencing at 9:30 a.m.

2 MADAM CHAIR: Good morning, Mr. Freidin.

3 MR. FREIDIN: Good morning.

4 MADAM CHAIR: We are going to start with  
5 you this morning to hear the final argument of the  
6 Ministry of Natural Resources and we have received a  
7 summary outline of your argument that we requested as  
8 each party begins its oral argument.

9 We have scheduled you for today and  
10 tomorrow, but you don't have to take up all that time  
11 if you don't want to. You can get through this as  
12 quickly as you wish and the Board will certainly  
13 appreciate that.

14 We will be hearing from OFIA beginning  
15 Wednesday morning, although if you are faster than we  
16 have scheduled you, Mr. Freidin, then I see counsel are  
17 here and they can perhaps begin earlier as well.

18 So why don't you begin, Mr. Freidin.

19 ARGUMENT BY MR. FREIDIN:

20 Madam Chair, I will just begin by perhaps  
21 bringing the Board up to date on two very important  
22 wins which have occurred lately. One was the Blue Jays  
23 last night, but in case you didn't hear I understand  
24 Michelle Swenarchuk won the big seat contest on Air  
25 Canada and I understand that she is unfortunately going



1 to have to leave us and catch the 11:15 flight to  
2 Thunder Bay.

3 Madam Chair, as you have indicated, I  
4 have provided the Board and parties with a copy of an  
5 outline of argument-in-chief and very briefly I will  
6 just go through that with you so you have a sense of  
7 where I am going to be going with my argument.

8 The first three items which appear on  
9 pages 1 and 2 are really matters which deal with  
10 environmental assessment principles and concepts.

11 The next item, item 4, basically will be  
12 a brief review of Chapter 1.9 describing the  
13 alternative methods of carrying out the undertaking and  
14 1.11, although it is difficult to summarize a matter  
15 which was dealt with at length in Chapter 1.1,  
16 potential environmental effects of the undertaking, I  
17 intend to just highlight some of the points there in a  
18 brief way.

19 The next subject matter that I will deal  
20 with are matters which are addressed in Chapter 2 of  
21 our written argument and I am referring to item No. 6  
22 and item No. 7 which relate to planning issues and  
23 public consultation.

24 Item No. 8, the subject matter of  
25 monitoring, is addressed in our Chapter 3.2 and you

1 will note that again that is a fairly extensive chapter  
2 and I will be dealing primarily with the issue of  
3 effects versus effectiveness monitoring and the  
4 differences between those two concepts and how it is  
5 important in interpreting some of the proposals being  
6 put forward by the various parties.

7 Item No. 9 will be to briefly address a  
8 matter which has been raised by the Board on a number  
9 of occasions and in a number of interrogatories and  
10 that is what is the Board's jurisdiction to effect  
11 government policy.

12 Item No. 10 is the subject matter of our  
13 Chapter 4.1, continuing developments, and I will be  
14 concluding by addressing a subject matter I think you  
15 have heard me comment on from time to time throughout  
16 the last four and a half years and that is the  
17 importance that I submit that the Board's reasons for  
18 decision will play in the future in relation to a  
19 number of important subject matters.

20 With that introduction, Madam Chair, if I  
21 might deal with the first subject matter, the  
22 description of the undertaking, and the issue I want to  
23 address here really -- I know it was a long time ago  
24 when the issue arose as to whether planning was part of  
25 the undertaking.



1                   As you are aware, the Ministry of Natural  
2 Resources' position has consistently been that the  
3 undertaking of timber management consists of the  
4 interrelated activities of access, harvest, renewal and  
5 maintenance.

6                   That matter was addressed by the Board in  
7 its ruling of January the 17th, 1990 wherein the Board  
8 held that the undertaking should properly be defined or  
9 characterized as a timber management proposal, plan or  
10 program in respect of the activities of access,  
11 renewal, harvest, and maintenance and hereby makes a  
12 finding to that effect.

13                  You will find the references I think to  
14 the sections of the argument that are really relevant  
15 to this particular matter in MNR's argument at pages 6  
16 and 7. The subject matter of the description of the  
17 undertaking for the purposes of this argument which are  
18 relevant for today's discussion appear at pages 5 to 11  
19 of the Ministry's written argument.

20                  Madam Chair, when I am referring to these  
21 page numbers I am referring to the page numbers in the  
22 bounds volumes and I am just assuming that everyone has  
23 those and unless that's not the case somebody should  
24 advise me and I can give them the other page numbers to  
25 help them follow. They are the stamped page numbers in

1 the top right-hand corner.

2 MADAM CHAIR: Do we want exhibit numbers  
3 for this material?

4 MR. FREIDIN: No, Madam Chair. They are  
5 not evidence and it is not customerary to make them  
6 exhibits.

7 As you are now aware as a result of  
8 receiving this written argument, the Ministry of  
9 Natural Resources, although we had taken the position  
10 from time to time that we were going to ask the Board  
11 to change its ruling on this matter, we are now taking  
12 the position that it is not necessary for the Board to  
13 in fact change the order that it made on January the  
14 17th, 1990.

15 The MNR is, however, requesting the Board  
16 to agree with a number of propositions in order to  
17 provide assistance in interpreting and understanding  
18 the practical significance of planning having been  
19 added to the definition of the undertaking.

20 The first proposition that the Ministry  
21 asks the Board to accept is that the undertaking is not  
22 just the planning process.

23 The Ministry notes that Forests for  
24 Tomorrow have taken the position that the undertaking  
25 is the planning process and only the planning process.



1                   Forests for Tomorrow relies on certain  
2                   wording in the Board's ruling of January the 17th, 1990  
3                   and the portion that they rely upon is that which is  
4                   found on page 8 of the Ministry's argument.

5                   In one of the passages in the Board's  
6                   ruling of January the 17th, 1990 certain words were  
7                   inserted in brackets. Those words weren't in other  
8                   portions and Forests for Tomorrow refer to that and you  
9                   will note that it says that the class EA should  
10                  properly be described in terms of a proposal, plan or  
11                  program and then the words are added "i.e., a timber  
12                  management planning process in respect to the  
13                  activities of harvest, access, renewal and  
14                  maintenance."

15                  The Proponent, Madam Chair, has put  
16                  forward the undertaking of timber management for  
17                  approval and the proponent has defined the undertaking  
18                  as the interrelated activities of the access, harvest,  
19                  renewal and maintenance and we are still asking for  
20                  approval of those activities. MNR has never ceased  
21                  asking for and continues to seek approval for that  
22                  undertaking.

23                  Before this order was made, during a  
24                  scoping session for Panel 17 the Board chairman at that  
25                  time commented upon the undertaking for which MNR was

1 seeking approval and if I might just refer the Board to  
2 a portion of the transcript. Volume 162, this is not  
3 referred to in our argument, Volume 162, page 28,851  
4 to -52 there was a discussion during that scoping  
5 session between Mr. Jeffery and Mr. Hanna about what  
6 the undertaking was and the the Chairman states  
7 commencing on line 24 of page 28,851 to say the  
8 following:

9 "What is asked to be approved are  
10 the activities. They have to be approved  
11 within the context presumably of some  
12 process. There has to be certain things  
13 done before you go out and build a road  
14 or harvest a particular area and that we  
15 have been loosely describing as a process  
16 to investigate and look at the impacts,  
17 positive and negative, before the  
18 decision is made to proceed with that  
19 activity and to that extent the Board is  
20 looking at what that process might be,  
21 but what we would be approving are the  
22 activities of the four items."

23 With that background, Madam Chair, when  
24 the Board issued its ruling on January 17th, 1990 MNR  
25 believes that the proper interpretation of the order is



1       that the Board added timber management planning to the  
2       the description of the undertaking so that the  
3       undertaking became timber management, access, harvest  
4       renewal, and maintenance and a planning process in  
5       relation to those activities.

6               Not to say that the Proponent was somehow  
7       no longer seeking approval to carry out timber  
8       management, but was in some way asking for approval of  
9       a planning process only.

10              It is my submission, Madam Chair, Mr.  
11       Martel, that for the Board's ruling to be interpreted  
12       any differently would be inconsistent with the legal  
13       jurisprudence which provides that the undertaking for  
14       which approval is sought is the Proponent's choice. In  
15       that regard I could just refer you to footnote No. 15  
16       on page 5 of the written argument.

17              Therefore, Madam Chair, the Ministry of  
18       Natural Resources asks the Board to clarify this matter  
19       in accordance with the submissions that I have just  
20       made.

21              There are some other matter that I would  
22       like to address briefly in relation to the issue of  
23       what the undertaking is. These issues arise or are  
24       referred to on page 9 of the written argument where the  
25       the Ministry describes in items 1, 2 and 3 three ways

1       that the Ministry does not believe the Board's ruling  
2       should be interpreted.

3               Now, Madam Chair, it may sound initially  
4       like what I am going to be submitting is somewhat  
5       academic and theoretical, but I would submit to you  
6       that these clarifications are important not only in  
7       relation to the undertaking of timber management, but  
8       in relation to the application of the Environmental  
9       Assessment Act in other environmental assessments and  
10      that, therefore, taking some time to deal with these  
11      matters is warranted.

12             The first proposition, I have sort of  
13      restated the first one. I have already indicated one  
14      proposition I would like the Board to accept.

15             The second proposition that I would ask  
16      the Board to agree to and indicate their agreement with  
17      in their reasons is that the planning process which you  
18      impose cannot be a planning process which relates to  
19      more than timber management.

20             The reasons for that submission are  
21      twofold. Firstly, if it was more than a process in  
22      relation to timber management it would be a planning  
23      process to achieve a different purpose than timber  
24      management and, as stated by the Board in one of its  
25      earlier rulings, the purpose of the undertaking should

1 not be changed.

2 Secondly, if the purpose of the planning  
3 process is to achieve a purpose or purposes in addition  
4 to timber management it would require a different  
5 undertaking.

6 Madam Chair, you may ask: Well, who is  
7 really saying that they are asking for more than a  
8 planning process related to timber management. The  
9 Ministry's response to that question is that Forests  
10 for Tomorrow are asking for that and the Ontario  
11 Federation of Anglers & Hunters and the NOTOA coalition  
12 are asking for that.

13 If I might refer to Forests for  
14 Tomorrow's written argument in Volume No. 1 at page 15,  
15 page 15 of Forest for Tomorrow's argument, Volume 1, I  
16 direct your attention particularly to paragraph 22  
17 where it states that in summary:

18 "FFT's recommended planning method can  
19 be justified on a number of grounds  
20 including..." And I go to the second  
21 one,

22 "FFT's proposal will result in an  
23 integrated and comprehensive planning  
24 process for both timber and non-timber  
25 resources which satisfies the purpose of



1                   the Environmental Assessment Act more  
2                   effectively than the proposals from the  
3                   Proponent and other parties."

4                   Later on you will see I will be making  
5                   submissions which indicate and substantiate the  
6                   proposition that what that means is that they are  
7                   asking for a planning process to achieve a different  
8                   purpose.

9                   In this section they indicate that their  
10                  planning process will achieve the purpose of the  
11                  undertaking which is to provide the forest industry  
12                  with a continuous and predictable supply of wood and if  
13                  we examine their terms and conditions and their  
14                  planning process they are also saying that it will also  
15                  at the same time achieve other purposes, in particular  
16                  the production of other benefits.

17                  Madam Chair, you may recall a  
18                  cross-examination that I conducted of Dr. Quinney  
19                  during OFAH Panel No. 4 where he admitted at the very  
20                  beginning of that cross-examination that indeed the  
21                  purpose of the undertaking being put forward by the  
22                  OFAH was different than MNR's, he agreed that the  
23                  undertaking that one would have to in fact engage in is  
24                  affected by the purpose and, in effect, that if there  
25                  was a different purpose you would end up having to, in

1 effect, implement a different undertaking.

2 Your observation or comment at that time,  
3 Mr. Martel, was to raise the question as to whether the  
4 Federation or the Coalition was attempting to do  
5 indirectly what the Board had suggested it couldn't do  
6 when you made your ruling in relation to purpose.

7 I would submit that the OFAH/NOTOA  
8 coalition and Forests for Tomorrow continue to seek to  
9 do through the backdoor indirectly what they I believe  
10 know they can't ask this Board to do directly and that  
11 is to approve an undertaking which is different than  
12 the undertaking which has been put forward by the  
13 Proponent for approval.

14 The third proposal -- pardon me, the  
15 third proposition that I would ask that you accept is  
16 that when planning is part of the undertaking  
17 alternative planning processes are alternatives to the  
18 undertaking. They are not alternative methods of  
19 carrying out the undertaking.

20 That's sort of a tough one to get your  
21 head around. Let me just repeat it. When planning is  
22 part of the undertaking, which the Board has held that  
23 it is, alternative planning processes, because planning  
24 processes have been defined as being part of the  
25 undertaking, are alternatives to the undertaking. They

1 are not alternative methods of carrying it out.

2 The Board has held that the undertaking  
3 includes timber management planning. If planning is  
4 the undertaking and someone comes along and says we  
5 shouldn't do timber management planning, i.e, we should  
6 do some other type of planning, that would constitute  
7 doing a different undertaking. It would in effect be  
8 an alternative to the undertaking. I'm sorry if I have  
9 perhaps just repeated for the third time the same  
10 point.

11 The cases are clear, Madam Chair, that  
12 the Board cannot approve an alternative to the  
13 undertaking. I don't believe that anybody is taking  
14 the position that in law that that is incorrect.

15 Forests for Tomorrow, in my respectful  
16 submission, want you to tell MNR to in fact do  
17 integrated forest planning and we find that request in  
18 their term and condition 124.

19 I submit to you that they know that that  
20 is a different undertaking than the one put forward by  
21 MNR for approval and at best it is an alternative to  
22 MNR's undertaking of timber management.

23 I submit to you that they know that you  
24 can't approval an alternative to the undertaking or  
25 tell the Proponent to actually implement one.



1           So where does this submission -- where is  
2           it going? Well, there is case law which says that the  
3           Board can approve an alternative method not proposed by  
4           the Proponent. You can't approval a different  
5           alternative to, but there is a case, there is a case  
6           which says that the Board can approve an alternative  
7           method not proposed by the Proponent.

8           It is my submission that FFT has seized  
9           upon that case and, therefore, have attempted to  
10          characterize their alternative to the undertaking,  
11          which is integrated forest planning, they have  
12          attempted to characterize that as an alternative method  
13          of doing timber management planning.

14          In my submission they have gone through  
15          that convoluted legal maze in order to somehow slip in  
16          or find a way that they can get the Board to do what  
17          they want the Board to do; that is to say, have a  
18          planning process that deals with more than just the  
19          purpose of timber management and because the planning  
20          process has been deemed to be part of the undertaking  
21          by this Board they are in effect saying approve a  
22          different undertaking.

23          For the all reasons I have submitted to  
24          you that is something which is beyond the jurisdiction  
25          of the Board. We, therefore, urge the Board not to

1 accept the proposition of FFT. I will just leave it  
2 there.

3 If I might just use an analogy, and I  
4 didn't realize might be so apropos having regard to Ms.  
5 Swenarchuk's recent win.

6 MS. SWENARCHUK: Careful, Mr. Freidin.

7 MR. FREIDIN: If she was in Toronto and  
8 she wanted to get to Sudbury and that was her purpose  
9 and, therefore, her undertaking was to get from Toronto  
10 Sudbury, if someone told her that she could get to  
11 Sudbury but probably achieve all kinds of more benefits  
12 if she flew around the world while she was doing that,  
13 somebody could say: Well, you are going to achieve the  
14 purpose of your undertaking, you are going to get to  
15 Sudbury, but I would suggest to you that by achieving  
16 all those other purposes and flying around the world  
17 she would really in effect be engaged in a very  
18 different undertaking.

19 The last proposition that I would ask you  
20 to accept, Madam Chair, arises out of item No. 3 on  
21 page 8 and this one I think I can deal with fairly  
22 quickly.

23 The Board has held in this hearing that  
24 timber management includes the planning process. In  
25 the future there will be bump-up requests, there will

1       likely be some bump-up requests that will be granted  
2       and when that happens the undertaking is very likely to  
3       be timber management.

4               I think it is clear that when those  
5       individual environmental assessments take place there  
6       will be no need to discuss or develop a planning  
7       process in relation to timber management.

8               The planning process in relation to  
9       timber management is being designed here and that when  
10      those individual environmental assessments take place  
11      the planning process is really taking place right  
12      within the environmental assessment because what you  
13      end up doing is getting approval to actually carry out  
14      the activities.   You have made all the decisions, you  
15      don't have to sort of do any future planning.

16              So I just foresee in the future the  
17      possibility that there will be an individual  
18      environmental assessment as a result of a bump-up  
19      request and somebody is going to come along and say:  
20      Well, because the Board in the class environmental  
21      assessment said timber management includes a planning  
22      process, that in that individual EA you have got to  
23      start developing or considering a different planning  
24      process.

25              That would be improper.   I don't believe



1 that the concern is theoretical, very theoretical or it  
2 is unlikely. I think it is a likely scenario and I  
3 understand that the Ministry of the Environment agrees  
4 with this submission and you can find reference to that  
5 on page 24 of the Ministry of the Environment's written  
6 argument.

7 Other than directing you to the  
8 submissions which are found on pages 10 and 11 of our  
9 written argument, Madam Chair, I don't propose to go  
10 through them. You would have noted that we have made  
11 separate sort of submissions in bold throughout our  
12 argument. Submissions 6 and 7 basically address the  
13 points that I was making and state them perhaps just a  
14 little differently.

15 If I might, Madam Chair, I would like to  
16 move on to what I have identified in the outline as  
17 environmental assessment of a class of undertakings.

18 In this environmental assessment the  
19 Ministry of Natural Resources is seeking approval for a  
20 class of undertakings. The reasons for taking that  
21 approach are described in Chapter 1.5 of our argument  
22 commencing at page 68. You don't have to go there I  
23 don't think, Madam Chair.

24 "Where approval of a class of  
25 undertakings is found to be appropriate

1                   and is granted one of the results is to  
2                   avoid having to carry out individual  
3                   environmental assessments every time the  
4                   Proponent seeks to carry out the  
5                   undertaking..." and in this case every  
6                   time the Proponent seeks to carry out the undertaking  
7                   of timber management on a forest management unit.

8                   Some submissions have been made to you in  
9                   the written argument which are of concern to the  
10                  Ministry of Natural Resources because if they are  
11                  accepted they would have the effect of requiring, in my  
12                  submission, individual environmental assessments on  
13                  each forest management unit every five years and would  
14                  call into question what class environmental assessments  
15                  are all about, and also what we have been doing here  
16                  for the last four and a half years.

17                  As you will recall, there has been  
18                  considerable evidence at this hearing regarding the  
19                  type of analysis that should be required, how much  
20                  documentation should be required in relation to that  
21                  analysis, in what situations should you do how much  
22                  analysis.

23                  You will recall the issue arose sort of  
24                  in the context of a discussion about environmental  
25                  planning and EA type analysis, particularly when Mr.

1 Bisschop was giving his evidence in our Reply Panel No.  
2 4 and he was cross-examined by Mr. Lindgren.

3 At that time Mr. Bisschop indicated that  
4 for good environmental planning you do not need the EA  
5 type analysis for every decision. You do not need for  
6 every decision to identify alternative methods, the  
7 various effects of the alternative methods. Choose a  
8 preferred method, rationalize the choice of that  
9 method.

10 You will recall that the Ministry of  
11 Natural Resources does, in fact, propose that that kind  
12 of detailed analysis occur in certain situations - I  
13 will get to this in a bit more detail later - and that  
14 is primarily in relation to areas of concern and in  
15 relation to road planning.

16 The Ministry of Natural Resources has  
17 identified those areas for that kind of detailed  
18 analysis because in the Ministry's view those are the  
19 areas where the risk of harm to the environment is  
20 greatest as a result -- or potentially greatest as a  
21 result of the activities of timber management and that  
22 that type of detailed analysis is not necessary in  
23 other areas.

24 It is my submission that some parties,  
25 and I would suggest Forests for Tomorrow in particular,



1 are suggesting that EA type analysis is required on  
2 each FMU for all activities every five years and the  
3 basis for that or at least one of the reasons for that  
4 position is that Section 5(3) of the Environmental  
5 Assessment Act requires it.

6 I don't intend to take you through any of  
7 this, Madam Chair, but in my submission you will find  
8 that that proposition is put forward or where I glean  
9 that from is pages 10 and 11 of Forests for Tomorrow's  
10 written argument.

11 As you are aware, Madam Chair, Section  
12 5(3) of the Environmental Assessment Act is the section  
13 which indicates what an environmental assessment must  
14 contain. Section 5(3) is the section which states  
15 that:

16 "An environmental assessment submitted  
17 to the Minister pursuant to Subsection 1  
18 shall consist of a description of the  
19 undertaking, a description of and  
20 statement of rationale for the  
21 undertaking, the alternative methods to  
22 the undertaking, the alternatives to the  
23 undertaking describing all the  
24 methods..." et cetera.

25 I have indicated that one of the reasons

1 that Forests for Tomorrow have suggested that a  
2 detailed kind of EA analysis must be required when you  
3 are doing a timber management plan on every FMU is  
4 because they say Section 5(3) of the act applies and  
5 when you are carrying out that undertaking and planning  
6 for it in a forest management you have got to meet all  
7 of those requirements and that means doing all of that  
8 kind of analysis in relation to all decisions.

9 It is the Ministry of Natural Resources'  
10 submission, Madam Chair, that it is in the class  
11 environmental assessment that the Proponent meets the  
12 requirements of Section 5(3) of the Environmental  
13 Assessment Act, that the Proponent only has to meet  
14 those requirements once because the act says that you  
15 have to meet those requirements as a pre-condition to  
16 the environmental assessment being accepted and it is  
17 here in this period that the environmental assessment  
18 is either going to be accepted or not.

19 So it is at this hearing that the Board  
20 must look at Section 5(3) and ask itself: Has the  
21 Proponent met the requirements of Section 5(3) so that  
22 we can now accept their environmental assessment and  
23 proceed to the next stage and answer the question  
24 whether you should approve the undertaking.

25 It is interesting, Madam Chair, that if

1       you look at Section 5(3) of the Environmental  
2       Assessment Act there is no definition about how much is  
3       required in order to meet those requirements.

4               It is my submission that the type of  
5       analysis and the type of documentation and the  
6       situations where certain types of documentation or  
7       analysis and documentation is required is what you  
8       impose through a planning process.

9               In other words, assuming we get approval  
10      and we get down to the forest management unit and the  
11      question arises: Where do you look for your  
12      requirements as to documentation, I submit to you you  
13      do not look to Section 5(3) of the act. We look to  
14      this Board's decision about the planning process that  
15      this Board is going to impose. We are going to look to  
16      the planning process that this Board will design to  
17      find out where we have to do what kind of documentation  
18      analysis.

19              There have been other class environmental  
20      assessments...

21      ---Off the record discussion

22              MR. FREIDIN: Madam Chair, the Board has  
23      been advised about other Class EAs. They were advised  
24      of that primarily through cross-examination of Mr.  
25      Bisschop once again by Mr. Lindgren and you have heard



1       that in some other class environmental -- pardon me, in  
2       some other cases where classes of undertakings have  
3       been approved there has been a requirement imposed in  
4       terms and conditions to do certain things or certain  
5       types of analysis and documentation at the project  
6       level which is perhaps more detailed or has more EA  
7       type analysis than what they perceive MNR is putting  
8       forward.

9               What I am referring to is, if you recall  
10       the cross-examination of Mr. Bisschop about the  
11       municipal roads Class EA and the class environmental  
12       assessment regarding roads to MNR facilities, you will  
13       recall in those cases in terms of the planning that had  
14       to get done after they had approval for the class of  
15       undertakings when they actually wanted to build one of  
16       those roads they had to, in fact, address a number of  
17       matters, including the purpose of the road and whether  
18       there was a need for the project at all.

19              You will recall that Mr. Bisschop  
20       testified that there is a difference between those  
21       environmental assessments and this one. They were  
22       similar, but only in the sense that the undertakings  
23       were approved after submitting a class environmental  
24       assessment.

25              The process that had to be followed after

1 approval was different because, as you will recall, Mr.  
2 Bisschop pointed out that the projects in those cases  
3 were independent or unrelated to each other and that  
4 the achievement of the purpose in one area did not  
5 affect the achievement of the purpose in another.

6 What happened in Hamilton as a result of  
7 building a road didn't have very much effect about what  
8 was going to happen in Thunder Bay when you built a  
9 road.

10 This undertaking is different in that  
11 this undertaking is one which is dealing with related  
12 activities across a large land base all designed to  
13 achieve the same purpose and, therefore, in relation to  
14 this undertaking you deal with the issue of purpose  
15 once. You deal with it here.

16 The citation, if it is helpful to you,  
17 Madam Chair, for the cross-examination of the evidence  
18 of Mr. Bisschop on the matters that I have just  
19 referred to are found at Volume 394 at pages 67,869 to  
20 67,878.

21 There is another factor, Madam Chair,  
22 which is extremely important when you are dealing with  
23 this question about how much documentation really is  
24 required at the FMU level. Putting it another way,  
25 another important factor when you are dealing with

1 Section 5(3) of the act apply somehow when you are  
2 doing planning at the FMU level.

3 The important factor is that this class  
4 environmental assessment is different than any other  
5 one, than any other one, because it is the only class  
6 environmental assessment where there has been a hearing

7 Two issues, in my respectful submission,  
8 arise from that fact. Firstly, what significance, if  
9 any, should that have on terms and conditions regarding  
10 documentation -- pardon me, analysis and documentation  
11 and the requirements to provide a rationale or an  
12 explanation for decisions which are made at the local  
13 level.

14 Secondly, what significance, if any, do  
15 the terms and conditions proposed by MNR and others  
16 have for things such as -- pardon me, what is the  
17 significance of the terms and conditions being proposed  
18 by MNR for things such as guidelines, their revisions,  
19 technical advisory committees, reporting developments  
20 over the term of approval, the very fact that there  
21 will be a set limited time of the approval.

22 What is the significance of all of that  
23 when you are dealing with what is reasonable for the  
24 Board to impose in terms of analysis and documentation?

25 I would submit, Madam Chair, that the



1       significance of this hearing and in particular --  
2       pardon me, is that the Board has been part of a process  
3       where a detailed examination of potential effects of  
4       each activity were described.

5               I only need refer in passing to the  
6       extensive evidence of MNR Panels 10 to 14, similar  
7       subjects being addressed by the OFIA by calling  
8       numerous experts to describe each of those activities  
9       and all the alternative methods of doing it, the  
10      potential effects of doing that.

11             I should refer to things such as the ESSA  
12      exercises where experts not only from MNR but from  
13      other organizations and other jurisdictions came  
14      together to address the question of effects and the  
15      results of those exercises were described to the Board.

16             You also heard how one goes about  
17      mitigating those effects based on knowledge of actual  
18      risk and the application of professional judgment and  
19      local experience.

20             All that means, Madam Chair, is that  
21      unlike any other environmental assessment, unlike any  
22      other class environmental assessment or the other ones  
23      which had no hearing you have been able to question the  
24      thinking behind the proposals. The Minister of the  
25      Environment didn't have that opportunity when she

1 approved others. There was no hearing.

2 You have been able to assess the  
3 knowledge, the professionalism and the dedication of  
4 those making resource management decisions. You have  
5 observed the development of processes and safeguards as  
6 the hearing has evolved. I need only refer back to the  
7 sorts of matters that I referred to before, guidelines,  
8 technical committees, et cetera.

9 In my submission, Madam Chair, all of  
10 that puts you and Mr. Martel as decision makers in a  
11 unique position to craft what you think is appropriate  
12 in terms of the planning process, not just to follow an  
13 approach which has been used in some other class  
14 environmental assessments, not to just follow an  
15 approach that was used in some other classes of  
16 undertakings where the environmental assessment was not  
17 conducted in the same way as this one, i.e., through a  
18 hearing.

19 To use one of the terms that came to be  
20 commonplace throughout the hearing, there is no need  
21 for this Board to look to other class environmental  
22 assessments or their approvals and somehow follow a  
23 cookbook approach and say because it was done that way  
24 for that classes of undertaking it has got to be done  
25 the same way for this.

1                   One last point, Madam Chair. By the way,  
2           Madam Chair, I started out this submission by saying  
3           some parties -- I should point out that I went through  
4           this because some parties have said that in this class  
5           environmental assessment that the Board is only dealing  
6           with the issues and the matters such as effects in a  
7           generic way, when they really only get dealt with in a  
8           more specific way during the forest management  
9           planning -- or during implementation of the undertaking  
10          at the FMU.

11                   They say that although this hearing can  
12          deal with these issues of methods and effects at a  
13          generic level, somehow the elements of Section 5(3)  
14          require them to be dealt with again at the local level.  
15          If they are suggesting that it has got to be at the  
16          same level of detail that we did here, then I would  
17          submit that they are wrong.

18                   The people who have made those  
19          submissions, the parties who have made submissions  
20          which have given rise to the concern I have addressed  
21          are Forests for Tomorrow. You will find references to  
22          that on page 10 of their argument and you will find  
23          references to comments which, although they may be  
24          somewhat unclear, may be interpreted to suggesting that  
25          you have got to redo this all at the FMU level and I am



1 referring to the argument of the Ministry of the  
2 Environment at page 75 to 77.

3 Before I leave this topic, I would make  
4 this observation, that there is a contradiction or  
5 inconsistency in the argument of some of the parties or  
6 those parties who have said you can deal with things  
7 generically here.

8 It suggests that somehow things weren't  
9 dealt with in enough detail that we can avoid some of  
10 that detail when we do timber management planning and  
11 implement timber management at the FMU level.

12 Some examples of that, what I am speaking  
13 of, are that some people have obviously felt that we  
14 have had enough evidence to make specific proposals  
15 about the size of clearcuts.

16 We have got people here, parties here who  
17 have felt that the evidence was so extensive, so  
18 detailed, so all-encompassing that they can be so  
19 specific in their terms and conditions to say that  
20 full-tree harvesting shouldn't have happened anywhere  
21 where the soil depth is less than 30 centimeters.

22 We have parties who say that they have  
23 heard enough evidence from their point of view that  
24 they can tell the Board that they should identify  
25 certain kinds of sites with certain types of

1 characteristics as sensitive sites and the Board  
2 should, in fact, require the Ministry of Natural  
3 Resources to do certain things when they encounter  
4 them.

5               Some parties have felt that there is  
6 enough evidence here to be very specific and say: We  
7 have heard enough and the Board has heard enough  
8 extensive evidence about the application of herbicides  
9 and particularly the aerial application of herbicides  
10 that the Board should ban it and we have had comments  
11 about insecticides and I could go on and on.

12              What I am saying to you, Madam Chair and  
13 Mr. Martel, is that if there has been enough evidence  
14 in this hearing for those parties to stand up and say  
15 that they can responsibly urge the Board to make those  
16 kinds of terms and conditions, then they can only do so  
17 because they believe that this Board has got a  
18 reasonable basis to do than and the only way they can  
19 say that is if they believe there has been extensive,  
20 convincing, all-encompassing evidence to support those  
21 findings.

22              So in my submission they can't have it  
23 both ways. They can't say do all that when there has  
24 been all this detailed evidence and somehow say: Oh,  
25 by the way, we are only dealing with this generically

1 in the class environmental assessment. Let's do all of  
2 that detailed planning again when we get to the forest  
3 management unit level.

4 The last item that I would like to  
5 address in relation to environmental assessment  
6 principles and concepts deal with the issue of need or  
7 the concept of need and the concept of the null  
8 alternative. I don't believe I will be as long with  
9 this one as I was with the last, Madam Chair.

10 The issues which really arise in relation  
11 to those words are what do they mean. Again, I am  
12 talking about, people talked about need for the  
13 undertaking, need for the road, they talked about  
14 considering the null alternative. In my submission it  
15 is important to understand why those words mean in the  
16 context of environmental assessments.

17 Secondly, are there any legal  
18 requirements to address those particular concepts, and  
19 I can just tell you that it is the Ministry's position  
20 that there is no legal requirement that you do that,  
21 and perhaps more importantly, where is it reasonable to  
22 address these issues or to use these concepts.

23 Is it during the class environmental  
24 assessment only? Is it during planning of timber  
25 management at the FMU level only are is it both?



1                   In my submission, Madam Chair, the proper  
2                   use of the word need applies to what occurs when there  
3                   is an environmental assessment when a proponent is  
4                   seeking to obtain approval to carry out an undertaking.

5                   The theory or the reason for the concept  
6                   in that context is that if you can't demonstrate that  
7                   there is a need for the undertaking, then any effects,  
8                   adverse effects which you impose or cause upon to occur  
9                   on the environment are unacceptable, but it is my  
10                  submission that once you have this demonstrated need  
11                  for the undertaking in the context of an environmental  
12                  assessment being considered and you have obtained  
13                  approval to carry out that undertaking, whether it is  
14                  an individual undertaking or a class of undertakings,  
15                  it is inconsistent to say or you can't say that one  
16                  must therefore still go and assess the question of need  
17                  again when you go and implement the undertaking at the  
18                  local level.

19                  I should just qualify a little bit of  
20                  what I have said. I may have caused a little bit of  
21                  confusion. You will recall a moment ago I referred to  
22                  the municipal roads environmental assessment and I  
23                  indicated in that case need was something that was  
24                  considered at the project level, if you will.

25                  I am submitting more particularly for

1 this undertaking it would be inconsistent for the Board  
2 to say you have got approval, you have demonstrated  
3 there is a need for the undertaking, to approve the  
4 undertaking which in effect says you can now go out and  
5 carry out timber management on the area of the  
6 undertaking and then to have as a matter of process  
7 having to go every five years in every management unit  
8 and again saying do I really need this undertaking on  
9 this management unit would be inconsistent because the  
10 approval to do just that, in my submission, is what the  
11 Ministry of Natural Resources is seeking here and, in  
12 effect, if approval is granted then the Ministry of  
13 Natural Resources shouldn't have to start doing that  
14 again every five years on every forest management unit  
15 in the province.

16 In my submission, need, that's really  
17 what the concept of need means in environmental  
18 assessment. It has been used, that word has been used  
19 differently during the hearing and in particular I can  
20 recall the cross-examinations of Mr. Bisschop by Mr.  
21 Lindgren. It seems to me that those cross-examinations  
22 will probably remain in my memory for a long time.

23 Mr. Lindgren was cross-examining Mr.  
24 Bisschop and saying: Well, don't you have to consider  
25 the need for the road. I mean, do you really need the

1 road. I will submit to you that when need is used in  
2 that context it is not in the normal way that need is  
3 used in environmental assessment, but in effect what  
4 Mr. Lindgren was posing to Mr. Bisschop was whether in  
5 fact you should actually be harvesting at the end of  
6 the road at all.

7 You will recall that Mr. Bisschop's  
8 response was that that is a matter which should not  
9 become part of a formal process at the local level,  
10 that you shouldn't look at the question about: Is that  
11 an area which is available for timber management.

12 It is an area which is available for  
13 timber management if, in fact, the Board approves the  
14 undertaking in the way that it has been put forward by  
15 the Ministry of Natural Resources and there should not  
16 not be a requirement to reassess that question by  
17 clothing the discussion about roads and the planning of  
18 roads with this word 'need'.

19 The last concept I want to deal with is  
20 null. Now, the null alternative, as you know, is  
21 something which the Ministry of Natural Resources  
22 addressed in this environmental assessment. The null  
23 alternative in environmental assessments, in my  
24 submission, refers to the practice which has developed  
25 that when you seek approval for an undertaking you also



1 identify what would occur if you didn't carry out the  
2 undertaking. The null alternative.

3 As I have submitted, that practice was  
4 followed by the Ministry of Natural Resources in its  
5 Panel No. 17 when it explained why the undertaking of  
6 timber management was the preferred alternative and why  
7 it was, therefore, the undertaking which was put  
8 forward for approval.

9 The Ministry of the Environment during  
10 their case and through the evidence of Ms. Dahl raised  
11 the question of the null or consider null during timber  
12 management planning at the local level.

13 As I indicated, there is no legal  
14 requirement to consider null and Ms. Dahl explained it  
15 as being something that was just a good thing to do  
16 when one is doing environmental planning.

17 You will note that the Ministry of the  
18 Environment has not concluded in a recommended term or  
19 condition that there be a requirement to consider the  
20 null at the local level, but I feel it is important  
21 just to address her evidence because the Board, of  
22 course, is not bound by or limited to imposing terms  
23 and conditions which have been recommended by the  
24 parties.

25 In my submission two questions arise when

1 we talk about what does null mean or consideration of  
2 null at the local level. If it is being put forward as  
3 an option which one can choose at the local level, then  
4 in my submission it is flawed for the same reasons that  
5 a consideration of need is inappropriate at the local  
6 level.

7 Again, if you have approval to carry out  
8 timber management on a certain land base it is  
9 inconsistent to say when we plan we will identify doing  
10 nothing and doing nothing is an option, doing no timber  
11 management is an option.

12 If, on the other hand, null is just  
13 something that you think about and you document to  
14 perhaps more clearly see what the effects of your  
15 activities are on the environment; in other words, if I  
16 do nothing these are the effects, no effects I guess,  
17 and if you carry out your activities there will be  
18 effects, what's the difference, and it is really I  
19 think in that context that I understood Ms. Dahl to be  
20 suggesting this consideration of null.

21 In my submission if that is what she was  
22 suggesting it would appear, it is my submission, that  
23 it really turns out to be nothing but a paper exercise  
24 because if you have done an assessment of what the  
25 effects of your activities are or are likely to be,

1 then it is quite clear that the effect of not carrying  
2 out the activities, the null, will be those activities  
3 or those effects not occurring.

4 So I really don't quite understand what  
5 the suggestion about doing something in a formal way  
6 about considering the null really means. If it means  
7 as I interpret her evidence it doesn't seem to have any  
8 practical reason for been done.

9 Madam Chair, those are the end of my  
10 submissions in relation to environmental assessment  
11 concepts.

12 Do you want to take a break now?

13 MADAM CHAIR: I think we need a break to  
14 warm up, Mr. Freidin. We will be back in 15 minutes.  
15 Thank you.

16 ---Recess at 10:37 a.m.

17 ---On resuming at 11:0 a.m.

18 MR. MARTEL: Mr. Freidin, I was wondering  
19 if you and each of the parties could address the reason  
20 for an EA in, if fact, you have to go back to square  
21 one each time.

22 What would be the purpose of having an EA  
23 then -- or Class EA, pardon me, if every time you go  
24 back to either the null for access or the null for  
25 something else? What would be the reason?



1 I invite each of the parties when they  
2 take their kick at the can to give me the reason for a  
3 Class EA if you are going back each time to the  
4 beginning unit by unit. Thank you.

5 MR. FREIDIN: Hopefully the position of  
6 the Ministry of Natural Resources' came through fairly  
7 clearly, that it wouldn't serve any useful function and  
8 it certainly wouldn't have been an environmental  
9 assessment that went into the kind of detail and took  
10 the length of time that we have been here.

11 Just before I leave that, Mr. Martel, I  
12 know you asked the other parties to address that, is  
13 there some confusion in your mind what the Ministry's  
14 position is on that matter?

15 MR. MARTEL: No, there is no confusion,  
16 but I sit here and I have read the documentation and I  
17 keep coming back to the same question: What is the  
18 value of a class environmental assessment if you go  
19 back to square one each time.

20 I am simply trying to get from each of the  
21 parties why they think we would go this route and then  
22 go back to consider the things that we have been asked  
23 to consider.

24 MR. FREIDIN: That was the question which  
25 I asked myself when I read some of the other arguments

1 and which I have attemptd to address, Mr. Martel.

2 The next topic I want to address is item  
3 No. 4 in the outline, alternative methods of carrying  
4 out the undertaking, which, as I have indicated, is  
5 discussed in Chapter 1.9 of the Ministry's argument.

6 As indicated earlier, those methods are  
7 described in MNR Panels 10 to 14 and were the subject  
8 matters of lengthy oral evidence.

9 I think I have already made the point  
10 that those methods were dealt within a great amount of  
11 detail and I believe I already submitted to you what  
12 the significance is of the fact that you have heard so  
13 much evidence about that, primary that you are able to  
14 approve the undertaking which will be carried out using  
15 all of the activities.

16 You have heard enough evidence that you  
17 can say whether all of the activities are proper  
18 methods of implementing the undertaking and that you  
19 are in a position to impose where you feel it is  
20 appropriate or is required terms and conditions  
21 limiting or restricting those particular methods.

22 Before I briefly deal with the contents  
23 of Chapter 1.9, I would like to refer you to page 107  
24 of the Ministry's argument, Volume 1.

25 I direct your attention to the heading at

1 the top of page Understanding Forest Dynamics,  
2 Resilience and Silviculture.

3 Before I start to deal with some of the  
4 evidence in relation to specific methods, specific  
5 issues in relation to the practice of timber  
6 management, I thought it would be worthwhile to  
7 emphasize or direct the Board's attention to the few  
8 short paragraphs which appear on this page and they  
9 speak to the fact that the Board, like a court or any  
10 decision maker, must decide which opinion to accept and  
11 act upon.

12 I put that in there partly as a result of  
13 questions from the Board from time to time and  
14 particularly, Mr. Martel, I recall you asking a number  
15 of times: What are we going to do with all of this  
16 evidence, and there is a lot of the evidence and there  
17 is conflicting evidence and you have the important and  
18 difficult task of coming to grips with what to do about  
19 that conflicting evidence.

20 I am hopeful that the few short remarks  
21 here will be helpful when you deal with that, that when  
22 you are assessing the evidence between conflicting --  
23 or witness's evidence that conflicts that you consider  
24 what the qualifications of those witnesses were.

25 Item B, which I would stress is extremely



1 important, what experience did the witness have about  
2 the specific subject matter that they were discussing  
3 and, thirdly, the demeanor of the witness.

4 I felt it was important to put in a few  
5 words or put a few words in the written argument about  
6 this because there are witnesses who appeared before  
7 you who were qualified to give expert evidence and when  
8 you go back and you look at the subject areas that they  
9 were qualified to give expert evidence about they are  
10 very similar in some cases.

11 I want to stress that that does not mean  
12 that their evidence must be considered to be equal.  
13 You can where you feel it is appropriate accept the  
14 evidence of one of those experts over another. You  
15 should do that where you feel that is obviously a  
16 reasonable thing to do and one of the criteria that you  
17 should use, I would submit, in deciding whose evidence  
18 to prefer and to adopt is the experience that that  
19 witness had about the specific subject matter they were  
20 discussing.

21 In this written argument there are  
22 specific references in some places to conflicting  
23 evidence of experts witness and the Ministry of Natural  
24 Resources in those specific cases has been very express  
25 about the Ministry's opinion as to whose evidence you

1 should prefer.

2 That isn't to say that the same question  
3 isn't going to arise in relation to a lot of other  
4 evidence, but I just leave you with those few remarks,  
5 that experts, just because you are qualified to give  
6 expert opinion in a certain area doesn't mean that your  
7 evidence should be given equal weight.

8 The experience that the witnesses had  
9 about the specific subject matters that they were  
10 discussing is an appropriate criteria to consider and I  
11 would submit that where a witness has considerable  
12 experience about the specific subject matter that they  
13 were testifying to and another person who was similarly  
14 qualified does not the evidence of the former witness  
15 is preferable.

16 Having said that, dealing with  
17 alternative methods of carrying out the undertaking,  
18 the first submission that I would like to highlight is  
19 really the second one in the outline and that is, given  
20 a specified silvicultural objective for a site the  
21 various methods of implementing timber management are  
22 not in all cases true alternatives.

23 Madam Chair, Mr. Martel, if you would  
24 turn to Chapter 1.9, Volume 1 at page 94, you will find  
25 a table entitled Generalized Silvical Characteristics

1 of Ontario's Principal Commercial Tree Species. That  
2 document is a reproduction of part of MNR's Panel 10  
3 evidence which was spoken to by Mr. Hynard.

4 The table identifies across the top  
5 headings or subject matters which affect the decisions  
6 about how one should harvest, the different silvical  
7 characteristics or the tree species which affect how  
8 they can regenerate, the sites on which they can  
9 regenerate, the difficulties and the differences  
10 regarding how each of them deal with vegetative  
11 competition, they talk about the types of seedbeds that  
12 are required, et cetera.

13 I don't intend to go through that, but  
14 you will recall that Mr. Hynard and other witnesses  
15 spoke about the silvical characteristics of not only  
16 black spruce which happens to be the one referenced on  
17 page 94, but all of the major commercial tree species  
18 in the area of the undertaking.

19 If one message came through, Madam Chair,  
20 I think it is that you can't have a general rule that  
21 says how you treat all species or, in fact, any one  
22 specific species, but that is a matter which, as a  
23 matter of practicality if nothing else, must be left to  
24 the professional forester when carrying out timber  
25 management at the forest management unit level.



1           As I have indicated earlier, all of the  
2 methods which were described by the Proponent are in  
3 the Proponent's opinion required or putting it another  
4 way, should be available to the Proponent in order to  
5 implement timber management and to achieve the purpose  
6 of the undertaking.

7           This particular chapter in the argument  
8 describes the three broad silvicultural systems which  
9 are used to harvest timber in Ontario, and I refer to  
10 the clearcut silvicultural system, the shelterwood  
11 silvicultural system and the selection silvicultural  
12 system, and there is an indication or description on  
13 page 110 and going over actually to page 112 where  
14 there is the identification of a number of factors  
15 which influence the choice of silvicultural systems.  
16 You will note that the first one and only the first of  
17 of five which have been enumerated is the silvical  
18 characteristics of the species being managed. So that  
19 the other factors are also matters which affect which  
20 particular method is employed.

21           If I could just go back to some of my  
22 earlier submissions, that doesn't mean, in my  
23 respectful submission, that you have got to do all of  
24 the rationalization and all the documentation of the  
25 thinking processes that professional foresters go

1 through every time they set a silvicultural  
2 prescription in a timber management plan and say:  
3 Document all the thinking that you went through.

4           Going going back to the point that you  
5 posed just a few moments ago, Mr. Martel, that is one  
6 of the reasons we have a class environmental  
7 assessment. One of the reasons we have a class  
8 environmental assessment and, more importantly, one of  
9 the reasons that we spent so much time and called so  
10 much evidence and other parties cross-examined other  
11 parties witnesses so extensively on the methods, why  
12 you carry them out and when you carry them out and how  
13 you decide whether you do this method in that location  
14 or another, is because it is here where I submit that  
15 we have had sufficient evidence for you to say: MNR,  
16 we approve the undertaking, you have explained to us  
17 and we understand the details of the various methods  
18 that you used to implement it, we are aware of the  
19 professionalism of the people who make those decisions  
20 and implement those activities and you have approval to  
21 carry out timber management through using those methods  
22 and you don't have to write a book every time you  
23 prepare a plan, you don't have to do every time you do  
24 a timber management plan what you did for four and a  
25 half years and explain in written and in oral form all

1 the thinking that goes behind the exercise of  
2 professional judgment in coming to sound silvicultural  
3 decisions.

4 We think that the kind of analysis you  
5 should do and the kind of documentation that you should  
6 be obligated to produce is something less, and I would  
7 submit it should be considerably less but, in any  
8 event, it is the question of how much analysis, in what  
9 cases and how it should be documented which, as I  
10 indicated at the opening, is a subject matter that the  
11 Board is charged to deal with and that you will design  
12 the appropriate planning process with the appropriate  
13 analysis and documentation requirements based on the  
14 consideration of the factors that I have just reviewed  
15 with you.

16 Chapter 1.9 also deals with methods other  
17 than just harvest methods. It describes the three  
18 logging methods which are used in Ontario; tree-length  
19 method, full-tree and shortwood harvest logging  
20 methods.

21 It describes the various methods of  
22 regeneration, both naturally and artificially; it  
23 describes the various methods of site preparation,  
24 chemical, mechanical and prescribes burns; it describes  
25 the various methods of tending, manual, mechanical,



1 ground application of herbicides and the aerial  
2 application of herbicides and in relation to each of  
3 those subject matters there was extensive evidence  
4 which I do not feel it is necessary for me to repeat  
5 and, again, which I submit all those methods should be  
6 available to the Ministry of Natural Resources to  
7 achieve the purpose of the undertaking.

8 The Ministry submits that this evidence,  
9 the extensive evidence it gave in relation to the  
10 alternative methods fulfills the requirements of  
11 Section 5(3)(b)(2) of the Environmental Assessment Act  
12 which requires a proponent to describe the alternative  
13 methods of carrying out the purpose of the undertaking.

14 Before I leave that particular topic just  
15 let me give you one example of where alternative  
16 methods -- pardon me, where given a specified  
17 silvicultural objective for a site the various methods  
18 of implementing timber management will not be true  
19 alternatives.

20 The one which I think you will hear about  
21 in more detail from perhaps other parties is that of  
22 whether artificial or natural regeneration are true  
23 alternatives given a specified objective on all sites.

24 You have heard extensive evidence about  
25 upland mixedwood sites which are very rich and

1 productive, that there is extensive amount of  
2 competition on those sites and the issue which always  
3 arises is if you go in there and you harvest  
4 particularly the conifer component or even the entire  
5 stand are both natural regeneration methods and  
6 artificial regenerations true alternatives in the sense  
7 that they will achieve the same objective in the same  
8 time frame using the situation where you want to return  
9 the site to at least the same amount of conifer that  
10 was there.

11 In my submission if we examine the  
12 evidence on that subject matters you can come to really  
13 no conclusion other than they aren't true alternatives  
14 in that situation, and that if indeed in the types of  
15 situations I have referred to you want to achieve a  
16 silvicultural objective to return conifer to the site  
17 that artificial regeneration methods are required and  
18 that natural regeneration methods really are not a true  
19 alternative because in many, many of those cases they  
20 just will not achieve that particular silvicultural  
21 objective.

22 Madam Chair, I could of course go on and  
23 give you example after example but I won't and I will,  
24 therefore, move to the next topic of potential  
25 environmental effects of the undertaking.

1                   This is a matter which is addressed in  
2 Chapter 1.11 and we have addressed this subject matter  
3 by breaking the discussion into five parts. We deal  
4 with the potential effects of timber management on the  
5 forest estate. There we are really talking about  
6 matters such as continued site productivity, the type  
7 of regeneration that can be expected having regard to  
8 the various silvicultural or timber management  
9 activities and you will find that subject matter dealt  
10 with from page 251 to 356.

11                   We also discuss potential effects of  
12 timber management on the terrestrial environment and  
13 you will find that commencing on page 120 to 126 -- I'm  
14 sorry, I am giving the wrong page numbers. I am giving  
15 you the old ones.

16                   Terrestrial environment is 357 to 383.  
17 Potential effects of timber management on the aquatic  
18 environment, pages 384 to 399, then what we did is  
19 dealt with the issue of pesticides all at one time. It  
20 has effects and potential effects in relation to all  
21 aspects of the environment which we in fact have  
22 addressed in Chapter 1.11. So we just dealt with it  
23 all in one place and you will find the discussion of  
24 the potential environmental effects of pesticide use in  
25 timber management on pages 400 to 422.



1                   The last subject matter, potential  
2                   effects of timber management on the socio-economic  
3                   environment, from pages 423 to the end of the Volume  
4                   No. 1 at page 461.

5                   It is a long chapter. Again, it is  
6                   matters addressed by everyone of our panels which dealt  
7                   with the activities of access, renewal, harvest and  
8                   maintenance and it was dealt with by other witnesses as  
9                   well and other parties.

10                  In my submission the Board should find  
11                  that the Ministry has met the requirements to describe  
12                  the effects of carrying out the undertaking and the  
13                  alternative methods and is, therefore, satisfactory  
14                  methods under the requirements of Section 5(3)(c)(2) of  
15                  the Environmental Assessment Act.

16                  In the outline provided to you, item No.  
17                  5, the Ministry has identified a number of points.  
18                  Going through the separate submissions alone in this  
19                  chapter, I think we are up over 100, 152 Ms. Blastorah  
20                  advises me, and I am certainly not going to take the  
21                  time to go through every one of them and advise the  
22                  Board why every one of them in the Ministry's view is  
23                  reasonable and should be accepted by the Board. So  
24                  what I will do is briefly go through the points on the  
25                  outline and perhaps supplement it from time to time.

1           The first one is a matter which I think  
2   is of prime importance. It was a matter which was  
3   addressed I believe for the first time by Professor  
4   Armson in MNR Panel No. 9 and that is the significance  
5   of the effects of the activities of timber management  
6   must be assessed by comparing them to the effects of  
7   natural disturbances in the forests under management.

8           I think it is important because I would  
9   submit that there is a tendency for the public to see  
10  timber management, to see that it is disturbing what  
11  was there and that that is bad just because it is  
12  disturbance, and I would submit that the Board has  
13  heard considerable evidence throughout the hearing and  
14  appreciates that disturbance is a natural phenomena in  
15  the boreal forests of Ontario, that the most  
16  significant agent of natural change in the boreal  
17  forests of Ontario is fire, which is the second bullet  
18  point we have.

19           Going to the third point, given the  
20  effectiveness of modern fire suppression activities  
21  harvest disturbance is an important agent of  
22  disturbance in the boreal forest and is the closest  
23  proxy for natural disturbance by fire.

24           I want to emphasize that the Ministry of  
25  Natural Resources has never said and does not say that

1 timber management activities and in particular the  
2 activity of harvest is the same as natural disturbance  
3 or that it is identical to natural disturbance.

4 The Ministry has submitted that there are  
5 some similarities and that it is the closest proxy for  
6 natural disturbance by fire in the boreal forests of  
7 Ontario.

8 The fourth point is a matter which is  
9 addressed in the argument in a number of places, but  
10 probably in the most consolidated way commencing at  
11 page 298 of the Ministry's argument.

12 You will see at page 298 the issue  
13 identified or the heading just above issue F is  
14 clearcutting, small versus large clearcuts, and their  
15 effects at the local forest level.

16 I don't think there is any question in  
17 anybody's mind, Madam Chair, that the issue of clearcut  
18 size is an issue on which there is some disagreement in  
19 this hearing. So I don't forget to say it, I probably  
20 wouldn't, the Ministry of Natural Resources strongly  
21 recommends against the setting of arbitrary clearcut  
22 size limitations for harvest in the area of the  
23 undertaking.

24 The parties who have proposed that there  
25 be limitations on the size of clearcuts have urged that



1 proposition on you, Madam Chair, Mr. Martel, on the  
2 basis, at least in part, that there are significant  
3 differences in terms of the effects on the environment  
4 when one compares small clearcuts on the one hand and  
5 larger, which they refer to as large area clearcutting,  
6 on the other.

7 Commencing at page 298 and running  
8 through to page 314 there is a discussion of that  
9 issue; that is, whether there really is a significant  
10 difference between the effects of large versus small  
11 clearcuts.

12 The issues which are addressed is  
13 whether -- I really have these again sort of captured  
14 in the fourth submit in the outline. What you find if  
15 you go through the pages I just referred to, the  
16 subject matters which are discussed are the effects of  
17 harvest microclimate, on microsite and moisture  
18 regimes, the effects of harvest on erosion and  
19 sedimentation of water courses, the subject matters of  
20 competition, is there a difference in relation to the  
21 amount of competition you can expect in a small versus  
22 a large area clearcut and what are the differences, if  
23 any, that the size of clearcut has on the ability to  
24 renew the site through natural regeneration methods.

25 The Ministry submits that the evidence

1 establishes and these particular pages that I have  
2 referred to you provide some of the basis for the  
3 submission, that on the matters identified, that is  
4 microclimate, microsite moisture regimes and the other  
5 ones enumerated in the summary point 4 there is no  
6 significant difference in terms of the effects on those  
7 subject matters when you compare small clearcuts to  
8 large.

9 In some of the cases or the situations,  
10 and these are described on these pages, Forests for  
11 Tomorrow put very specific, clear questions to MNR  
12 witnesses and I recall most clearly questions being put  
13 to Mr. Greenwood and Professor Armson I believe in  
14 Reply Panel 5 that don't you agree that there is a  
15 difference in terms of microclimate when you go through  
16 from small to large and they expressly said no.

17 You have their evidence on that. You  
18 have evidence of other experts like Dr. Methvan who  
19 have testified that when you are talking about  
20 microclimate, once you get beyond the shaded portion of  
21 the cut caused by the standing timber you are out into  
22 the, I guess we could say, open area and once you get  
23 beyond that very small area next to the standing timber  
24 there really is no significant difference between the  
25 effects on microclimate.

1                   We have heard a lot about natural  
2 regeneration and I think the suggestion has been made  
3 if not expressly, the impression has been left that  
4 somehow you can only have natural regeneration if you  
5 have small area clearcuts.

6                   If you recall the evidence about all the  
7 various methods of natural regeneration, if you are  
8 talking about regeneration from standing trees as a  
9 seed source, we have heard how sometimes you can use  
10 strip cuts which might be small area clearcuts and rely  
11 on the standing timber to provide seed to the harvested  
12 area, and Mr. Marek said even that wouldn't work  
13 perhaps in all cases in relation to black spruce which  
14 he talked about.

15                   We have heard about using a seed tree  
16 method, if you are using group seed tree methods, if  
17 you are using some of those other methods you can use  
18 those methods in large area clearcuts equally just as  
19 you can use them in a smaller cut.

20                   The last point I would make in relation  
21 to this alleged difference is whether there really is  
22 evidence for the Board to conclude that you somehow  
23 have less competition in a small area clearcut when you  
24 compare it to a large area clearcut.

25                   In my submission the evidence is such



1       that the Board should find that there is no significant  
2       difference in terms of the amount of competition that  
3       you get when you compare those two situations.

4               Obviously if you have a small area  
5       clearcut and it is 50 hectares and you have one which  
6       is 500 hectares, in total you are going to have  
7       obviously more competition on one than the other  
8       because one is 500 and the other is 50, but what I am  
9       suggesting is that if you took an area of that large  
10      area clearcut, just 50 hectares of it, there is no  
11      evidence for you to conclude that you should expect  
12      significantly more competition on 50 hectares of the  
13      500 than you would on the 50 hectare clearcut.

14             You recall Mr. Marek gave evidence  
15      regarding some of his clearcuts and he described at one  
16      point the difficulties he was having with grasses  
17      smothering his seedlings.

18             You have evidence, and I can't tell you  
19      the exact passage at the moment, you have evidence of  
20      Dr. McCormack who showed you a photograph of a strip  
21      cut which had received an application of herbicide.  
22      The herbicides didn't cover the entire clearcut, it  
23      didn't get right to the edge and his photograph  
24      demonstrated that near the edge where the herbicide  
25      wasn't applied and, therefore, it had no effect there

1 was a proliferation of competition and in the open part  
2 of that clearcut where the herbicide had been applied  
3 the situation was much different and the seedlings were  
4 not being suppressed by competing vegetation.

5 So those are just some of the examples,  
6 important examples in my submission, which when taken  
7 together with all of the evidence should support a  
8 finding that the types of effects that I have referred  
9 to are not significantly different when you compare  
10 small versus large area clearcuts.

11 I made the point that MNR does not say  
12 that clearcutting is the same as fire. One of the  
13 significant things about that difference is that fire  
14 removes portions of the forest floor which is conducive  
15 to the natural regeneration of conifer by seed and  
16 suppresses in many cases the growth of hardwood  
17 species, whereas the activity of the harvest causes  
18 less disturbance to the forest floor and encourages  
19 hardwood competition which together can preclude  
20 successful natural regeneration on some sites.

21 So the very act of harvesting is  
22 different than fire in that respect and if that  
23 difference, that proliferation of competition because  
24 of the disturbance of the forest floor through  
25 harvesting, that gives rise to the need to use some of

1 the methods which have been described to the Board and  
2 which the Ministry indicates must be available to  
3 successfully achieve the purpose of undertaking.

4 Again, I go back to the question of  
5 herbicides having regard to all of the evidence that  
6 you have heard about competition, the kind of suckering  
7 you can get from poplars when you disturb the forest  
8 floor and the effect that the proliferation of that  
9 species can have on the success of regenerating sites  
10 to desirable species you have to have available all the  
11 tools that we have described to deal with vegetative  
12 competition including the aerial application of  
13 herbicides.

14 Another issue, Madam Chair, Mr. Martel,  
15 which was the subject matter of considerable evidence  
16 was full-tree harvesting. I do not intend to review  
17 our written argument on that matter. I would just  
18 summarize our evidence by indicating that the Ministry  
19 does not believe that the evidence supports a  
20 restriction on full-tree harvesting in the area of the  
21 undertaking on the basis that it causes unacceptable  
22 environmental effects.

23 We rely on the evidence of a number of  
24 MNR witnesses and others and I refer primarily in terms  
25 of MNR to Mr. Greenwood and Professor Armson.



1                   In passing a comment on their evidence  
2           that the proposals by some of the other parties that  
3           full-tree harvesting be limited based on the single  
4           criteria of soil depth is not a proposition which the  
5           Board should accept, that it ignores the other factors  
6           which affect tree growth and ignores the dynamics of  
7           the forest environment in which trees grow.

8                   If I could just have one moment.

9                   In terms of the terrestrial environment,  
10          you will note that in my outline of argument on page 4  
11          I have been pretty brief and I have stated at the last  
12          submission in item No. 5 that MNR submits that timber  
13          management does not on balance cause unacceptable  
14          effects on the terrestrial, aquatic or social and  
15          economic environment.

16                   If I just might make a couple of brief  
17          points in that regard and these are only some of the  
18          points which are made in our written argument. The  
19          first one being that terrestrial wildlife species which  
20          occur in the area of the undertaking are adapted to  
21          periodic natural disturbance and can readily survive  
22          timber management disturbance that resemble natural  
23          events. They are just like the trees; they have  
24          developed in a disturbance environment and they have  
25          adapted.

1                   Secondly, that the significance of the  
2                   effects of timber management on wildlife presence and  
3                   abundance should be judged in light of the maintenance  
4                   of viable populations at the provincial level and  
5                   whatever other specific resource management objectives  
6                   or concerns there may be in the area.

7                   There is evidence in the argument in  
8                   Chapter 1.11 and there is also argument in Chapter 1.10  
9                   that refers to various expert witnesses in relation to  
10                  wildlife who have concluded that there is no evidence  
11                  that timber management has caused the populations of  
12                  species in Ontario to fall out of the viable population  
13                  range.

14                  We have heard extensive evidence from  
15                  wildlife biologists and wildlife managers regarding  
16                  numerous initiatives that the Ministry of Natural  
17                  Resources has underway to address and to better  
18                  understand the effects and the potential effects of  
19                  timber management on wildlife in the area of the  
20                  undertaking.

21                  The point I am making is that  
22                  notwithstanding the view that viable populations are  
23                  not being threatened by timber management, the Ministry  
24                  of Natural Resources is not sitting on its hand and  
25                  saying: Well, we don't have to do anything.

1                   They numerous initiatives to ensure that  
2   they increase their knowledge regarding those  
3   relationships so that they can increase their comfort  
4   and the comfort of the public that the conclusion that  
5   they have come to on the best scientific evidence  
6   available at this time is correct; that is, that timber  
7   management is not threatening the viable populations of  
8   wildlife species in this province.

9                   Before I leave the topic of environmental  
10   effects I would ask you to turn back to the  
11   introduction on page 258 and in that introduction there  
12   are a number of general principles and concepts that  
13   should be considered when assessing the effects of  
14   timber management.

15                   The first one I think I have spoken to  
16   and that is that timber management activities do have  
17   effects on the environment. The Ministry has never  
18   said and it doesn't say today that timber management  
19   does not have effects on the environment. To do so  
20   would be silly.

21                   What the Ministry is saying is that when  
22   you look at the effects of timber management, the  
23   positive effects of timber management on the one hand  
24   and you look at those negative effects that you believe  
25   occur as a result of timber management on the other,



1       that on balance the effects are acceptable. Putting it  
2       another way, that on balance the effects are such that  
3       it should not be a reason for you to refuse approval of  
4       the undertaking of timber management.

5               When considering what the effects might  
6       be I would ask to you recall the extensive evidence  
7       regarding how professional forest managers go about the  
8       business of preventing, mitigating, minimizing and in  
9       some cases remedying adverse effects of timber  
10      management.

11             The second matter is one which -- it  
12      would be faster for me just to read than to explain why  
13      I am not going to read it. It says the activities of  
14      timber are interrelated and therefore one should not  
15      consider the effects of one activity in isolation from  
16      the effects of timber management activities which  
17      follow.

18             The third item I can't stress too much,  
19      is my personal feeling of the matter, and that is when  
20      examining scientific literature and studies about the  
21      effects of timber management activities one must be  
22      careful to assess whether the activities being analysed  
23      are similar to timber management activities as they are  
24      implemented in Ontario and whether the environments in  
25      which those activities are taking place are similar to

1 or different from Ontario's forest conditions; for  
2 example, factors such as climate, topography, soils and  
3 the nature of the ecosystems must be compared.

4 I am sure that examples of studies and  
5 examples of witnesses coming to this hearing from other  
6 jurisdictions come to your mind and you would probably  
7 not have much difficulty in filling a page of that.

8 I am not suggesting that the witnesses  
9 who came from those other jurisdictions or the studies  
10 in fact should not be considered. You shouldn't  
11 dismiss their evidence out of the hand, but I would  
12 submit that you should be very careful that when you  
13 are looking at these studies from other jurisdictions  
14 and they report that the effects were this or that from  
15 timber management does not mean that the effects will  
16 be this and that when timber management occurs in  
17 Ontario.

18 If I can just give you one example of  
19 that. We heard considerable evidence starting in MNR's  
20 case and it came up over and over again studies which  
21 were done called Hubbard Brook experiments in New  
22 Hampshire. Borens and Likens did a series of studies,  
23 they had an ongoing study there in the White Mountains  
24 in New Hampshire for years.

25 Studies come out, like the one that

1       talked about what sort of nutrients you would find in a  
2       water course after certain activities, and it was after  
3       clearcutting. The reports came out and people I think  
4       have referred to it from time to time as saying: Well,  
5       there you go, there is an article about clearcutting  
6       and, look it, there is the result. All this nitrogen  
7       in the water, it even affected water quality for  
8       drinking purposes, but when you examine the literature  
9       you find that it really wasn't the normal clearcutting  
10      exercise.

11                   They cleared it all, they applied  
12      herbicides repeatedly for this express purpose of  
13      making sure something didn't happen. Over a number of  
14      years they kept applying this stuff because what they  
15      were trying to do was trying to force the system so  
16      they could see how much had to happen before they could  
17      observe such an effect.

18                   That study has been described in the  
19      literature as not really being a study in relation to  
20      timber management, that it was an experiment to do what  
21      I have just indicated it was.

22                   I could go through the evidence and I  
23      could refer you obviously to evidence from Dr. Carr who  
24      talked about what the situation in British Columbia is  
25      in relation to compaction and rutting potential and all



1 the cross-examination that talked about the differences  
2 in terms of soil types and slope and the combination in  
3 which they occur and I could go on and on and on, but I  
4 am not going to do that.

5 I just ask or urge the Board that when  
6 they are considering the evidence of expert witnesses  
7 and others who talk about what they have seen, what  
8 they have experienced, what the scientific literature  
9 says you must extremely careful to ensure that the  
10 activities that they are looking at are similar, that  
11 the circumstances in which those similar activities  
12 occurred are similar so that you can make some  
13 connection between whether what happened somewhere else  
14 is going to happen in Ontario.

15 The last item is a matter of basically  
16 uncertainty regarding explicit quantitative  
17 cause/effect linkages between human disturbance and  
18 effects of the natural environment exist in all  
19 jurisdictions.

20 That is a matter which is addressed in  
21 this chapter, but probably even more directly in  
22 Chapter 4.1 and 3.2. 3.2 is the chapter that's deals  
23 with monitoring and we will be getting into this later  
24 and that is the whole discussion about the relationship  
25 between having quantitative or explicit quantitative

1 cause/effect linkages and what that means or doesn't  
2 mean in terms of monitoring and Chapter 4.1 which deals  
3 with continuing developments is replete with examples  
4 of studies and initiatives that the Ministry of Natural  
5 Resources has instituted to, in fact, better understand  
6 the cause/effect linkages between human disturbance and  
7 the effects on the natural environment, studies which  
8 hopefully will as a result of improving that  
9 understanding permit reliable or credible explicit  
10 quantitative cause/effect linkages to be identified.

11 To conclude this discussion regarding  
12 effects, Madam Chair, I would refer you to page 259 and  
13 260 of the MNR argument. You will note that starting  
14 in the last full paragraph there is reference to an  
15 exercise which took place in the United States in the  
16 early 70s. It is entitled the President's Advisory  
17 Panel on Timber and The Environment and it was invited  
18 to study the entire range of timber management problems  
19 throughout the United States and to recommend methods  
20 of accomplishing the harvest of timber while ensuring  
21 adequate protection for the environment.

22 That study was referenced in MNR Panel  
23 No. 10 and it was spoken to by Mr. Greenwood.  
24 Professor Armson testified that he was aware of and  
25 knew some of the experts who served on that panel, that

1       those people were leaders in their fields.

2               Without in any way suggesting because --  
3       I am not saying it is because those people found the  
4       situation to be a certain way in their jurisdiction  
5       means that you have to find it to be the same here.  If  
6       I did that I would be contradicting myself, but I would  
7       refer you to the passages starting at the bottom of  
8       page 259 and carrying over to page 260 where that  
9       advisory panel concluded that:

10               "Properly executed timber harvesting  
11               and other silvicultural procedures need  
12               not result in important long-term losses  
13               of soil nutrients, deterioration of the  
14               soil nor cause other physical  
15               environmental damage."

16               The panel concludes that:

17               "Timber harvesting must be carefully  
18               planned and carried out and when this is  
19               proper done such harvesting is not  
20               generally inimical to the maintenance of  
21               a sound, biological environment."

22               I would submit to you, Madam Chair, Mr.  
23       Martel, that based on the evidence that you have heard  
24       at this hearing that it would be reasonable for you to  
25       come to a similar conclusion and to go further and to



1 say the manner in which timber management was described  
2 to you by MNR is in fact occurring and that because it  
3 is occurring in the fashion that was described to you  
4 by MNR that it is properly done and that such  
5 activities are not generally inimical to the  
6 maintenance of a sound, biological environment.

7 It is twelve o'clock, Madam Chair. I am  
8 finished my argument in relation to effects. This  
9 might be a good time to break.

10 MADAM CHAIR: Thank you, Mr. Freidin. We  
11 will adjourn until 1:30.

12 ---Luncheon recess at 12:00 p.m.

13 ---On resuming at 1:30 p.m.

14 MADAM CHAIR: Good afternoon, Mr.  
15 Freidin. We're ready when you are.

16 MR. FREIDIN: Madam Chair, the next area  
17 that I would like to deal with is item No. 6 on the  
18 outline of the oral argument and I want to deal with  
19 the topic of planning issues. And I'm not going to  
20 deal with the specifics of very many; again, to do so,  
21 would take a lot of time and I think that the written  
22 material conveys our message fairly clearly.

23 I would like to deal with two issues in  
24 relation to planning and, that is: What are reasonable  
25 analysis and documentation requirements. It's going to

1 be a bit of a revisiting but, hopefully, not a  
2 repetition of what I said this morning. To the extent  
3 it is, I'll try to make it short.

4 And the second issue that I will deal  
5 with is: What are we planning for. And, in that  
6 regard, I will be dealing with the issue as to whether  
7 this Board can order land use planning -- or make land  
8 use planning decisions or should put in place a  
9 planning process which effectively permits and  
10 contemplates that land use planning decisions be made  
11 at the local level when timber management planning  
12 occurs on an FMU.

13 The first issue then, dealing with --

14 MR. MARTEL: What is meant by that?

15 MR. FREIDIN: Well, Mr. Martel, when I  
16 get to that issue I will make it very clear when I get  
17 there what is meant by that but, if you prefer, I can  
18 explain that right now. I can explain it right now.

19 It would be my submission that this Board  
20 does not have the jurisdiction to make land use  
21 allocation decisions and it is also my submission that  
22 some parties are proposing planning processes which, if  
23 approved, would contemplate the possibility of making  
24 land use decisions; in other words, changing the use of  
25 lands from the permitted uses set out in district land

1 use guidelines.

2 And it is the Ministry's submission that  
3 such a planning process, one which would actually  
4 contemplate as one of the outcomes a decision to change  
5 the uses to which the lands had already been allocated,  
6 would be a planning process not in relation to timber  
7 management but would be a planning process in relation  
8 to a different purpose.

9 And, for that reason, the Board should  
10 not approve or accept the proposals of those parties  
11 who are suggesting such a planning process; and it is  
12 also my submission that it is beyond the jurisdiction  
13 of the Board to approve such a planning process.

14 One of the issues I'm going to deal with  
15 when I get to that subject matter is a matter which  
16 arose back in panel No. 7 of Forests for Tomorrow when  
17 I was cross-examining Dr. Muller and saying: Well,  
18 you're talking about changing the use of land, of  
19 saying you can't do timber management.

20 And, Madam Chair, I recall during that  
21 cross-examination you asked me whether that was somehow  
22 inconsistent because the Ministry of Natural Resources'  
23 planning process contemplates situations where a  
24 decision might eventually be made that there will be no  
25 timber management, those kinds of decisions being made



1 through our area of concern planning process. You  
2 said: That's a matter I want you to address in final  
3 argument, and so I'm going to.

4 And I will be making submissions which,  
5 hopefully, will convince you that there is a difference  
6 between making a decision not to operate in a certain  
7 area as part of the Ministry's area of concern planning  
8 process and determining that various uses of land as  
9 permitted in the district land use guidelines should be  
10 changed, that certain areas should be identified as  
11 wilderness areas or roadless areas or turned into a  
12 park, are different kind of decisions, and although the  
13 end result is that no timber operations will occur, in  
14 one case they are proper; and in one case they are land  
15 use planning decisions and improper.

16 And I will be addressing the question of  
17 the difficulty of deciding where you draw the line in  
18 making those decisions, and I will have some  
19 suggestions as to how the Board should deal with the  
20 difficulty of drawing that line.

21 And I think probably with that  
22 introduction, so you'll know where I will be going, I  
23 will go back to area of concern planning. I just  
24 wanted to make it clear that I never know whether -- no  
25 one ever knows whether they can get into everyone

1       else's mind, but I remember you asking that in panel 7  
2       and I haven't forgotten and, hopefully, by expanding on  
3       that, if I have read your mind correctly, I will  
4       address the issue in your mind and, hopefully, I will  
5       do it successfully from my client's point of view but  
6       that's what I'm here to do.

7                       Now, dealing with AOC planning, Madam  
8       Chair, I will begin by making a statement of the  
9       obvious. No one wants the production of unnecessary  
10      paper, everyone I think has agreed at this hearing that  
11      freeing up forest managers from office work so that  
12      they can spend more time in the field, in the forest,  
13      is desirable.

14                     On the other hand, however, any planning  
15      process must provide for some level of documentation of  
16      of the planning which has occurred. So the issue,  
17      therefore, becomes: Must the level of analysis be  
18      required for every decision be the same, must the  
19      documentation of the decision-making process for every  
20      decision have to be the same, what is the philosophy or  
21      principle which should govern what is a reasonable  
22      amount of documentation.

23                     Earlier today I spoke why Section 5(3) of  
24      the Environmental Assessment Act requirements don't  
25      apply to everything and why the Board's planning

1 process will indicate what are reasonable analysis and  
2 documentation requirements in given situations.

3 What I want to do now is to discuss MNR's  
4 philosophy on this issue and try and put in some  
5 perspective where MNR and the other parties line up on  
6 this issue. I'm hopeful that by doing so it will  
7 demonstrate to the Board that MNR's proposals regarding  
8 where more detailed analysis is necessary are  
9 reasonable proposals.

10 Not to suggest, Madam Chair, Mr. Martel,  
11 that the amount of documentation is a factor to  
12 determine whether in fact analysis should be done. I  
13 mean, if the analysis are required, the analysis are  
14 required, but MNR submits that in terms of  
15 documentation which must be produced to meet planning  
16 requirements MNR's proposals occupy the reasonable  
17 ground on the continuum, from very little documentation  
18 to what some people have suggested and what I would  
19 characterize as mounds of documentation, some of it  
20 being unnecessary.

21 I have already indicated earlier this  
22 morning that the philosophy that MNR uses to determine  
23 where the analysis is required, the more detailed  
24 analysis, is where the risk of harm is greatest, and  
25 I've indicated that it's in those areas where values



1 have been identified giving rise to areas of concern  
2 and when building roads.

3 And, from my perspective, the suggestions  
4 which have been made by other parties which have the  
5 possibility of increasing the amount of required  
6 documentation are ones which are based on, firstly, a  
7 belief again that the Environmental Assessment Act  
8 requires EA type analysis in relation to all decisions.  
9 You've already got my submissions on that and I won't  
10 repeat them.

11 Secondly, there are parties who believe  
12 that there are situations, in addition to those that  
13 the Ministry has identified as being the ones with the  
14 greatest risk of harm, as being situations where, again  
15 from their perspective, they say: There are situations  
16 that you haven't identified where there's a significant  
17 risk of harm, we think there's a significant risk of  
18 harm and, therefore, according to your own philosophy  
19 MNR you should do AOC kinds of documentation.

20 The issue obviously between the parties  
21 who say that and the Ministry is that the Ministry does  
22 not accept the proposition that the situations they're  
23 describing are ones where the risk of harm is  
24 sufficiently high that this additional kinds of  
25 analysis and documentation is required.

1           The one example of that that I would like  
2   to address for a few moments is the proposal by the  
3   Ministry of the Environment which you will find at  
4   pages 95 to 99 of their argument, and that is the  
5   proposal in relation to their proposed term and  
6   condition 32(c) where they are suggesting that until  
7   such time as silvicultural guides are revised, in  
8   accordance with certain commitments made by the  
9   Ministry, that certain areas that they describe as  
10   being sensitive should not have operations on them  
11   unless they are subjected to the area of concern  
12   planning process.

13           If you turn to page 95 of the Ministry of  
14   the Environment argument we can quickly review what  
15   those particular situations are so that we are all  
16   talking about the same thing.

17           There have been certain terms used at the  
18   hearing, certain descriptors, if I can use that term,  
19   which MOE have seized upon, and they have taken the  
20   position that areas that do fit those descriptions are  
21   situations where there is a high risk of environmental  
22   harm, and those are sites which are identified as  
23   protection forest, protection forest reserve, areas  
24   which may be untreatable based on topography, portions  
25   of site class 3, and they also indicate in the middle

1       that the planning requirements that they are referring  
2       to should also refer to areas untreatable based on  
3       residuals.

4                       I make the observation that some of the  
5       situations they have described are the situations where  
6       one could say an area had those descriptors before  
7       harvest but, in some cases, such as the last example  
8       where areas are untreatable based on residuals, is  
9       something which is the result of harvest.

10                      If we turn over the page to page 97, two  
11       pages over, under the heading Definition of Sensitive  
12       Sites, the Ministry of the Environment indicate in the  
13       first full paragraph, third line:

14                      "The Ministry of the Environment  
15                      submits that it is quite feasible to  
16                      adopt a systemic set of criteria to  
17                      define fragile or sensitive sites."

18                      It's my submission that the evidence does  
19       not support that proposition, that in fact the  
20       pre-identification of sites which may be fragile or  
21       sensitive in the air is something which is very  
22       difficult to do.

23                      Perhaps, more importantly, if we go back  
24       to page 96 we will see what's the concern of the  
25       Ministry of the Environment about operations on these



1 areas without documentation. And from my reading of  
2 page 96 what they are concerned about is what they  
3 refer to as degradation to the land base in the form of  
4 unsatisfactory regeneration, and I have come to that  
5 conclusion primarily by looking at the second bullet on  
6 page 96.

7 By the way, if you go back to page 95, it  
8 just basically says:

9 "The rationale for proposing special  
10 planning occur prior to operations in  
11 sensitive areas was addressed by Mr.  
12 Neary during MOE's evidence. The  
13 rationale for MOE's concern is summarized  
14 as follows."

15 And they refer to successive forest  
16 regrowth in No. 1; in bullet No. 2 they indicate:

17 "While revegetation almost always  
18 occurs on harvested areas, unsuccessful  
19 regeneration of a site to either  
20 a non-commercial species or to less  
21 vegetative biomass than before harvesting  
22 can degrade the land base."

23 And they then go on in the fourth bullet  
24 and they indicate, four lines up from the bottom:

25 "There are areas where it is likely

1                   site damage will occur and regeneration  
2                   is likely to be less than satisfactory."

3                   So those are the concerns which I  
4           understand have caused the Ministry of the Environment  
5           to say these areas require more analysis and  
6           documentation.

7                   The Ministry of Natural Resources'  
8           response to that proposition is contained in the  
9           Ministry's argument at page 555 - I think that will be  
10          going to - and it goes through to page 558.

11                  The material that you have reproduced  
12          there is primarily from reply statement of evidence No.  
13          5 and I would just highlight a few portions.

14                  In relation to PF and PFR which is the  
15          first item I would point out the comment in the last  
16          three lines of item No. 1.

17                  "The amount of area falling into the  
18                  PF and PFR designations is about 8 per  
19                  cent ranging from zero to 38 per cent on  
20                  any particular management unit."

21                  I'm just trying to very quickly give some  
22          perspective in terms of the area we're talking about  
23          here. Page 556 where we talk about portions of site  
24          class 3, it states three lines up from the bottom of  
25          the first full paragraph that -- well, it actually goes

1 through and indicates in a document written some years  
2 ago there was a reference to areas of site class 3 too  
3 poor for timber production, and the paragraph says  
4 here:

5 "There is no other definition of this  
6 area, therefore, it is not possible to  
7 quantify the amount of the area of the  
8 undertaking."

9 Point No. 3 on page 556, the heading is  
10 Portions of Site Class 3. Again, the first full  
11 paragraph:

12 "It is not possible to quantify the  
13 amount of the area of the area of the  
14 undertaking which would qualify as  
15 portions of site class 3 for the purpose  
16 of MOE's conditions."

17 I would suggest to you, Madam Chair, that  
18 the conclusion, the only reasonable conclusion you can  
19 come to based on the evidence is that those areas can't  
20 be identified. Mr. Armson was questioned about this  
21 matter, that was a comment made in a report that he saw  
22 when he did his audit back in 1976, and so what is  
23 being asked of the Ministry of Natural Resources is to  
24 do some area of concern planning on an area that no one  
25 really knows what it is they're talking about. And I



1 say that goes in relation to the Ministry of the  
2 Environment as much as it goes for Mr. Armson.

3 And then we have an indication of the  
4 amount of area that we're talking about which can range  
5 again from 2 per cent up to as much as 53.2 per cent of  
6 any particular management unit.

7 Now, perhaps more importantly in relation  
8 to this topic are comments reproduced on page 557,  
9 because I've already indicated that the size of the  
10 area isn't sort of the determining factor, one has to  
11 consider whether there truly is a risk which should be  
12 addressed through more analysis and documentation.

13 The evidence is, and I refer to the  
14 second item No. 5 on page 557, you'll see the second  
15 paragraph begins:

16 "In relation to PF, PFR...",  
17 there is an indication in the indented  
18 portion about the amount of such area on the Kenora  
19 Crown Management Unit, over 35 per cent and the comment  
20 is made:

21 "In our opinion normal timber  
22 management planning on those management  
23 units has been very satisfactory without  
24 the use of the AOC planning process to  
25 make what are essentially timber

1 management decisions."

2 Mr. Hynard spoke to this matter as well  
3 and you'll note at the bottom of page 557 there is a  
4 quote from Mr. Hynard who indicates how much protection  
5 forest reserve there is on his unit. He says that:

6 "There is a lot of rocky ground", and  
7 then he says:

8 "In relation to those areas it is  
9 normal to set prescriptions, it is normal  
10 to go through exactly the same  
11 silvicultural decision-making processes  
12 we have been talking about."

13 For him it is a normal operating area,  
14 for him -- he says:

15 "I don't have to do different kinds of  
16 analysis, I apply the same kind of  
17 analysis for determining my prescriptions  
18 on those areas as all others and using at  
19 least the example of the Kenora Crown  
20 Unit, they haven't had any experience of  
21 unsatisfactory results without using the  
22 AOC planning process in those cases."

23 If you accept the evidence that I have  
24 just referred to, then I would submit to you that there  
25 is no basis on which the Board should distinguish

1 between the areas identified by MOE in their proposed  
2 terms and conditions and normal operating areas.

3 There is no evidence that I can recall  
4 that, in my submission, would substantiate a conclusion  
5 being drawn by the Board that the descriptors used by  
6 MOE are indeed areas where the risk of harm to the  
7 environment is such that it requires more detailed  
8 analysis and documentation of silvicultural  
9 decision-making than do areas which have been referred  
10 to as normal operating areas.

11 I go back to what MOE have stated on page  
12 96 in bullet No. 2, they say:

13 "While revegetation almost always  
14 occurs on harvested areas, unsuccessful  
15 regeneration of a site to either a  
16 non-commercial species or to less  
17 vegetative biomass than before harvesting  
18 can degrade the land base and may  
19 aggravate undesirable environmental  
20 effects associated with harvest."

21 It is my submission, Madam Chair, that  
22 the evidence from forester, after forester, after  
23 forester at this hearing is that all lands which are  
24 harvested return or regenerate to commercial tree  
25 species.



1                   No. 1, in some cases it takes longer than  
2                   would be the case if the area was subjected to certain  
3                   renewal treatments and, in some cases, the commercial  
4                   tree species which are regenerated and dominate the  
5                   stand may not be the most desirable commercial tree  
6                   species but they are commercial tree species.

7                   The evidence that I would refer you to to  
8                   support that proposition is referred to on page 316 of  
9                   MNR's argument.

10                  MS. SWENARCHUK: Page number again,  
11                  please?

12                  MR. FREIDIN: Page No. 316.

13                  That will be in Volume No. 1 where it is  
14                  stated, an excerpt from the transcript -- I'm sorry,  
15                  panel 4 witness statement in the last full paragraph of  
16                  the quote:

17                         "It must be recognized that areas  
18                         which do not receive a regeneration  
19                         treatment will usually take a longer  
20                         period of time to regenerate than that  
21                         taken for treated areas."

22                  And more to the point, in the very first  
23                  part of that quote:

24                         "Except for forested land that is  
25                         removed from timber production by the

1                   presence of permanent roads and  
2                   landings, virtually all areas that are  
3                   harvested, burned by wild fire, blown  
4                   down by wind or killed by insects or  
5                   disease regenerate over time to  
6                   commercial tree species."

7                   To the same effect, other comments were  
8                   made of a similar nature by Mr. Kennedy in Volume 155,  
9                   page 26943, by Mr. Multamaki in the same volume at page  
10                  26951 - I don't have any others quickly at hand - and  
11                  Mr. Davison at page 26951 to 26953 of the same volume.

12                  So based on the criteria that MOE have  
13                  set up, that it doesn't regenerate to commercial tree  
14                  species, I would submit to you the evidence indicates  
15                  that the situation that they're envisaging doesn't  
16                  occur because all areas do revegetate to commercial  
17                  tree species.

18                  MNR has a term and condition that  
19                  addresses the concern that some people may have about  
20                  the regeneration taking longer than might be the case  
21                  if there was a renewal treatment, and that is term and  
22                  condition No. 30, and that term and condition is spoken  
23                  to on page 317 MNR's argument.

24                  And, in a nutshell, it indicates that:

25                  "The timber management plan will

1 record the area of planned harvest that  
2 is expected to regenerate to commercial  
3 tree species within a prescribed time  
4 (i.e. years to free to grow) as specified  
5 in the maximum allowable depletion  
6 calculation whether by artificial or  
7 natural regeneration methods."

8 And it continues and says that:

9 "A discussion shall also be provided  
10 concerning the relationship between the  
11 area of planned harvest and the area  
12 expected to regenerate to commercial tree  
13 species within that prescribed time  
14 period."

15 MNR, Madam Chair, has not sort of turned  
16 a blind eye to the fact that there may be situations  
17 where operations may cause unacceptable effects on the  
18 physical environment, and although they are of the view  
19 that the descriptors used by MOE are not ones which  
20 accurately identify areas where degradation of the land  
21 base will occur, MNR has committed to prepare  
22 environmental guidelines which will address the issue  
23 of whether or not timber management operations may  
24 cause such degradation.

25 Those environmental guidelines are

1       referred to in two locations in the written evidence;  
2       one place in the written evidence and also in the  
3       argument. If I can refer to Exhibit 2272 which is the  
4       Ministry of Natural Resources reply statement of  
5       evidence No. 3, at page 5 it states in the second full  
6       paragraph as follows:

7                       "MNR agrees that in specific site  
8                       conditions the use of certain practices  
9                       or equipment during timber management  
10                      operations has a greater potential to  
11                      cause negative environmental effects and  
12                      that such practices or equipment should  
13                      be used cautiously in those site  
14                      conditions. The proposed environmental  
15                      guidelines for timber management  
16                      activities are intended to provide  
17                      additional guidance to operators working  
18                      in the field about good practices which  
19                      should be used in those site conditions  
20                      and also to provide criteria to be  
21                      explicitly considered by resource  
22                      managers during prescription setting."

23                      And in the same vein at page 661, it  
24       states in the second full paragraph:

25                      "Although MNR has not made any firm



1 decisions regarding the primary use of  
2 the proposed environmental guidelines, it  
3 is anticipated that the manual will  
4 address the general subject of site  
5 productivity, in particular, nutrient and  
6 compaction concerns and the subject of  
7 clearcutting."

8 Now, Madam Chair, I don't want to leave  
9 you with the impression that the Ministry of Natural  
10 Resources, if they identify these sites, have accepted  
11 the proposition that that necessarily means that they  
12 have to become the subject matter of an area of concern  
13 planning process. The Ministry of Natural Resources,  
14 unless it is some highly unusual situation, would  
15 submit that the incorporation of guidance in  
16 guidelines, as has been explained to you at length, is  
17 an acceptable way of communicating to professional  
18 forest managers situations about which they should  
19 perhaps be aware and exercise careful decision-making  
20 in the field.

21 Madam Chair, those are my submissions in  
22 relation to the MOE position on this matter, but before  
23 I leave -- if I could just have one moment, please.

24 I would like to move on quickly to the  
25 matter of roads. The issue of road planning is

1 addressed in MNR's argument at pages 533 to 551. It's  
2 on those pages where the discussion of corridor  
3 planning and planning the location of roads outside of  
4 AOCs is discussed, and road planning in areas of  
5 concern is addressed at pages 563 to 566.

6 I indicated that the Ministry believes  
7 that it's appropriate that more detailed analysis and  
8 documentation be done for roads than for other matters  
9 such as silvicultural operations in normal operating  
10 areas, and they believe that that is appropriate  
11 because roads are permanent or semi-permanent physical  
12 intrusions on the landscape and that they potentially  
13 affect values and other uses substantially and,  
14 therefore, warrant reasoned decisions.

15 By reasoned decisions I'm not suggesting  
16 that other decisions aren't reasoned but ones where you  
17 go through the EA type analysis.

18 In relation to roads we have a wide  
19 spectrum of opinions, and if I can describe it this  
20 way: There are two sorts or levels of road planning;  
21 there is the road corridor planning stage and which is  
22 usually done in the Ministry's planning process over a  
23 20-year period or it looks forward 20 years, and then  
24 you have the specific locational planning which is the  
25 road planning for where the roads are going to go

1 within the five-year term of the timber management  
2 plan.

3 And the Ministry of Natural Resources  
4 approaches those two levels of planning by dealing with  
5 matters in a more general way during corridor planning  
6 and they deal with specific effects and mitigation  
7 measures when they do the five-year road planning.

8 Forests for Tomorrow would require that  
9 the specific effects be identified and mitigation  
10 measures be identified during both levels of planning,  
11 and the OFIA would in fact require only general levels  
12 of planning or general planning at both levels.

13 So, in effect, Forests for Tomorrow are  
14 requiring more specific effects and mitigation measures  
15 than what the Ministry of Natural Resources is  
16 proposing, they're proposing at both levels and not  
17 just one, and the OFIA are proposing that less road  
18 planning be done at both levels of planning.

19 It is MNR's submission that it occupies  
20 the reasonable ground on that continuum and that the  
21 Ministry of Natural Resources does analysis which is  
22 appropriate for the type of decision being made.

23 Again, Madam Chair, this is an area -- I  
24 looked at this matter again last night and tried to  
25 think how I could somehow summarize or highlight

1 certain points in an area that was almost impossible to  
2 do, so it was either say just what I've said or go  
3 through every issue page after page and I decided not  
4 to do the latter and, hopefully, from my client's  
5 perspective and from the Board's perspective that was  
6 the right decision. Having said that I'm going to move  
7 on to the next subject matter.

8 And the next subject matter is the issue  
9 of land use planning that I introduced when we first  
10 got back from lunch. And the issue again is: What are  
11 we planning for, or to put it another way: What are we  
12 not supposed to be planning for.

13 As stated, one of the fundamental issues  
14 the Board has to address is whether proposals being  
15 made by other parties are, firstly, asking the Board to  
16 make a decision which changes the use of land from the  
17 uses to which they are presently allocated, actually  
18 asking this Board to make those kinds of decisions, or  
19 are proposals being made by other parties that are  
20 asking the Board to impose a planning process for each  
21 forest management unit which contemplates as an  
22 acceptable product or outcome the allocation of land to  
23 various uses.

24 And, as I outlined earlier, this in my  
25 submission is fundamental because MNR submits that the



1       undertaking is timber management and that timber  
2       management does not and cannot involve land use  
3       allocation decisions.

4                       I would submit there are two basic  
5       reasons for this proposition and reasons which, in my  
6       submission, support the proposition being accepted:  
7       Firstly, land use allocation decisions have been made  
8       at higher levels of planning than the forest management  
9       unit and in a much broader context than just timber  
10      management planning. Secondly, people involved in  
11      timber management planning do not have the authority,  
12      the responsibility, and the provincial government  
13      direction to turn timber management planning into land  
14      use planning.

15                      There is no question that some of the  
16      parties to this hearing are advocating planning  
17      processes designed to make land use allocation  
18      decisions, and I don't think there is much doubt about  
19      that, but because I think the matter is important  
20      enough I will just refer you to two transcript  
21      references. The first two are referenced which record  
22      evidence of Forests for Tomorrow witnesses -- pardon  
23      me, the first one was Ms. Swenarchuk. She stated in  
24      Volume 266, page 48195 during a discussion in panel 7  
25      of their evidence, she made the following comment:

1                    "This is the essential thrust of  
2                    FFT's case. We are looking at a  
3                    fundamentally changed approach to land  
4                    use planning for forest land and that is  
5                    the consistent element of our case."

6                    Dr. Morrison who was one of the two  
7                    witnesses who gave evidence in that panel stated, and I  
8                    quote:

9                    "But timber management activities in  
10                    Ontario can be broken down into the  
11                    following classes: an activity which is  
12                    fundamental which is allocating land, and  
13                    this may be an allocation to industrial  
14                    forestry purposes, or it may be an  
15                    allocation to other purposes."

16                    So Dr. Morrison at volume -- that was at  
17                    Volume 286 page 51225, those two comments in and of  
18                    themselves make it clear, Madam Chair, that Forests for  
19                    Tomorrow believe that the planning process should be  
20                    one where land use allocation decisions can be made.

21                    In fact, if one reviews the evidence of  
22                    panel 7 of Forests for Tomorrow, it is quite clear that  
23                    what they were talking about was doing net present  
24                    value calculation of social benefits for the purpose of  
25                    deciding whether areas of land were best put to the use

1 of timber management, wilderness or some other use.

2 The whole panel, in my respectful  
3 submission, was premised upon the assumption that  
4 timber management includes the allocation of land to  
5 various uses and, as I have submitted earlier, it is  
6 MNR's submission that it does not, that the decision  
7 regarding the uses to which various lands will be  
8 allocated are made during higher levels of planning,  
9 they were made and have been made through strategic  
10 land use and district land use plans, a planning  
11 exercise which was described to you during panel 1 of  
12 MNR's case and it is there where it is proper to deal  
13 with those issues and it is improper to bring those  
14 issues from those levels of planning down into timber  
15 management for the reasons that I have indicated  
16 before; and that is, that the decisions have been made,  
17 perhaps more importantly, that people involved in  
18 timber management planning do not have the authority,  
19 the responsibility or the provincial government  
20 direction to turn timber management planning into  
21 something else and something else being land use  
22 planning.

23 The other reference that I would give you  
24 to a party advocating a planning process where land use  
25 allocation decisions are to be made is found in Volume



1 346 at pages 60438 to 60447. Those are the pages of  
2 the transcript, Madam Chair, Mr. Martel, where my  
3 cross-examination of Dr. Quinney in OFAH panel No. 4  
4 occurred which I described earlier where he indicated  
5 that the purpose of their planning process was  
6 different, that the undertaking would be different as a  
7 result.

8           You may ask yourself the question - I  
9 certainly asked myself the question: Well, is MNR  
10 somehow unique in this approach of having different  
11 levels of planning and saying land use allocation  
12 decisions get made at certain levels, operational  
13 decisions - how you're actually going to implement  
14 things on the ground - get made at others. And the  
15 answer to the question is that they are not unique,  
16 that having different levels of planning is common for  
17 large resource management agencies.

18           I will be referring to the example of the  
19 United States Forest Service in my submissions, and  
20 although I acknowledge that there are differences  
21 between the details of their system and the one that is  
22 used in Ontario, I will be submitting to you that their  
23 system recognizes the difference between various levels  
24 of planning, that their system recognizes necessarily  
25 that land use allocation decisions once made, firstly



1 are made at a higher level of planning than operational  
2 decisions, and once having been made, it is improper to  
3 have them revisited during operational planning.

4 I would submit to you that such  
5 distinction is necessary for orderly resource  
6 management. In effect, there must be some finality of  
7 certain types of decisions, and in this case land use  
8 planning decisions, so management agencies can get on  
9 with the task of planning and implementing operations.

10 It is my submission that without some  
11 certainty regarding permitted land uses, the  
12 achievement of objectives set at higher levels than the  
13 FMU - I'm talking now about at the provincial level, at  
14 the regional or district level - will be easily  
15 frustrated, indeed the setting of provincial objectives  
16 would almost end up being a crap shoot in the sense of  
17 never knowing whether operations contemplated as  
18 necessary to achieve the objectives will actually be  
19 permitted to occur. And this is a theme that was  
20 common to many of my cross-examinations, Madam Chair,  
21 Mr. Martel, and you may recall that.

22 If you're going to have provincial  
23 programs which say we want to produce certain benefits  
24 on a certain land base and they institute a program to  
25 do that, to put a planning process into place that

1 actually could say every five years: Well, it's too  
2 bad if you're depending on our land base, we're going  
3 to change the use to which the land in our land base is  
4 going to be put because that's what we've decided in  
5 our planning exercise.

6 And if they do that in the next unit and  
7 a little bit on that unit and not on the other unit,  
8 and we've got a hundred of them approximately, the  
9 ability to know whether you are ever going to have a  
10 chance of achieving the provincial objective, the  
11 chance of knowing that, as I said, is a crap shoot. It  
12 would be putting in place a system which would  
13 frustrate the ability of the Ministry of Natural  
14 Resources to indeed have a responsible timber  
15 management program.

16 In terms of the theory that I'm  
17 expressing, the concept that I'm talking about, I would  
18 submit to you that even the Forests for Tomorrow  
19 witnesses in panel No. 7, at least one of them, agreed  
20 with what I'm saying right now, and I would refer you  
21 to volume 290, page 51794 to 795 where during my  
22 cross-examination of Dr. Muller we had a discussion  
23 about cost/benefit analysis at the forest management  
24 unit level and whether it had to be constrained by  
25 provincial policies or overall provincial policies.

1 And in my question I asked him this, or stated that:

2 "The degree of flexibility --", I  
3 suggested that:

4 "The degree of flexibility that one  
5 has at the forest management unit level  
6 regarding objectives and the inputs could  
7 be constrained by objectives set at the  
8 provincial level."

9 His response was:

10 "Well, to take a specific example, I  
11 presume that if there was a provincial  
12 objective to dedicate a certain number of  
13 hectares to wilderness, non-road access,  
14 wilderness based recreation with no road  
15 access that that could constrain the  
16 decisions at the appropriate forest  
17 management unit levels.

18 "Q. Right. As could a decision at  
19 the provincial level that certain areas  
20 would in fact be available for the  
21 activity of timber management.

22 "A. That's also true."

23 So I suggest to you that Dr. Muller, one  
24 of the FFT witnesses who was actually talking about  
25 land use allocation, has agreed with the proposition

1 that I have put forward just a few moments ago, that  
2 you can't have revisiting of land use allocation  
3 decisions at the operational level, this is Dr. Muller:

4 "You can't be revisiting land use  
5 allocation decisions at the local level  
6 in the absence or in disregard of  
7 provincial objectives."

8 And as you are aware from the evidence,  
9 and I will be reviewing it with you a little bit later,  
10 when the land use plans state that timber management is  
11 a permitted use on certain land bases, those land bases  
12 are necessary and, where identified, to contribute to  
13 the achievement of the provincial objective and whether  
14 that decision should be changed, whether more land or  
15 less land should be allocated to that use is, in my  
16 respectful submission, a decision which belongs at the  
17 level of planning where it was made in the first place,  
18 where the people have the authority and the  
19 responsibility and the provincial direction to make  
20 those kinds of decisions, not to be given to individual  
21 foresters and members of planning teams preparing  
22 timber management plans which are intended to  
23 operationalize or put into on-the-ground action those  
24 activities which are necessary to in fact achieve those  
25 higher level objectives.



1 I indicated that I would refer to the  
2 United States Forest System and I would like to just do  
3 that very briefly. As I indicated, that system  
4 recognizes this level of planning and that as a matter  
5 of process that the distinction must be maintained  
6 between land use planning and operational planning, and  
7 that dissatisfaction about land use planning decisions  
8 ought not to enter the operational level  
9 decision-making.

10 You'll recall that Mr. Zane Smith from  
11 the United States Forest Service testified in FFT panel  
12 No. 10 and he gave some evidence which I would submit  
13 supports the proposition that I am putting to the  
14 Board. And if I might, I'd like to refer you to Volume  
15 301, at pages 53624 to 53626. Starting at line 12 of  
16 page 53624, and I'm not reading every word, I do not  
17 believe I'm taking things out of context, he states, or  
18 the question was:

19 "Is it fair to say that one of the  
20 concerns which has arisen in the United  
21 States Forest Service is that sometimes  
22 when your staff were involved in doing  
23 project level decisions they're trying to  
24 achieve much broader objectives set out  
25 in the land use plan and sometimes

1 members of the public, certain interest  
2 groups who are not satisfied with the  
3 decision in the land use plan, attempt  
4 to raise at the project level land use  
5 planning issues?"

6 Before I go on, you will recall that Mr.  
7 Smith agreed that the document that they refer to in  
8 the United States Forest Service and they call forest  
9 plans are more like our district land use guidelines  
10 and their operational plans --

11 MS. SWENARCHUK: I would like the  
12 reference to that characterization of the evidence.

13 MR. FREIDIN: All right, I'll provide it  
14 to you tonight.

15 Mr. Smith answered that question, he  
16 said:

17 "I think that does occur, some people  
18 never give up, would like to, you know,  
19 recycle decisions. If the core issue is  
20 whether to cut timber or not on a piece  
21 of national forest that has been  
22 allocated to timber and other uses and  
23 somebody challenges that through the  
24 administrative appeal process the  
25 reviewing officer generally can

1 dismiss it fairly fast, just simply  
2 say --", and I interjected and I said:

3 "This is through an administrative  
4 appeal of a project level decision?"

5 And he said:

6 "Yes."

7 And I asked him to continue and he  
8 continued and said:

9 "Once that's done --", this is an  
10 appeal now for someone who's tried to raise land use  
11 decisions at the operational level:

12 "Once that's done, it's been our  
13 experience that the courts are really not  
14 too interested in dealing with it and  
15 they rather quickly dismiss those as  
16 well.

17 "Q. The basis of those kinds of  
18 dispositions are, we went through a  
19 planning process we made those decisions  
20 and let's get on with implementing them?

21 "A. Yes."

22 In the same vein, if I might refer you to  
23 again the same volume at page 53651 where Mr. Smith  
24 gives an example of the type of a decision that  
25 wouldn't be properly made or addressed during

1 operational planning. My question was this:

2 "And as an example of a kind of issue  
3 that would fall into one of those  
4 decisions which are not expected to be  
5 routinely visited during site-specific  
6 analysis would be somebody coming  
7 along and saying: Gee, that area is  
8 brown --", they're talking about their  
9 forest plan had been coloured in different colours to  
10 indicate different uses:

11 "Somebody comes along and says: Gee,  
12 that area is brown, it's forest use, I  
13 think we should turn it into a  
14 wilderness area. I take it that is the  
15 kind of decision which is not expected to  
16 be routinely revisited during  
17 site-specific analysis.

18 "A. That's correct.

19 I would submit whether you're talking  
20 along coming along and saying this should be a  
21 wilderness area or whether you come along in timber  
22 management planning and say this should be a roadless  
23 area, it doesn't really make a lot of difference.

24 I acknowledge, Madam Chair, that the  
25 United States Forest System is different than the



1 planning system in Ontario in a number of respects and  
2 I'm sensitive that I don't mischaracterize Mr. Smith's  
3 evidence.

4 I recall Ms. Swenarchuk pointed out some  
5 of the differences between the two systems when she  
6 re-examined Mr. Smith in panel No. 10. She pointed out  
7 things, and I don't have the three or four items, but  
8 the fact that they have a formal appeal mechanism for  
9 their land use planning procedures was the one that  
10 comes immediately to mind.

11 The point, however, in my submission, is  
12 that the differences which were pointed out through  
13 that re-examination are not relevant to the issue.  
14 Putting it very simply in my submission, land use  
15 planning is land use planning, is land use planning and  
16 the fact that in one case it is a legal requirement  
17 with the appeal mechanisms, which is the situation in  
18 the United States Forest Service, and in the other case  
19 it is not, which is the situation in the case of  
20 Ontario's land use guidelines, does not change the  
21 nature of the planning exercise.

22 It is my submission that if someone in  
23 Ontario is unhappy with the land use decisions made  
24 during MNR's strategic or district land use planning  
25 exercises, it doesn't mean that it is appropriate or

1 within the Board's jurisdiction to address that  
2 unhappiness by saying that you can revisit that  
3 decision during timber management planning or, in fact,  
4 change timber management planning into land use  
5 planning.

6 In regard to the differences between the  
7 United States Forest Service and what goes on in  
8 Ontario in terms of land use planning, I submit that  
9 the differences weren't quite as dramatic in Mr.  
10 Smith's view after my cross-examination as it was  
11 before he appeared before the Board. And what I'm  
12 referring to is that in the written material which was  
13 provided or filed by Forests for Tomorrow, and if I'm  
14 wrong in that, at least during the oral evidence, Mr.  
15 Smith indicated that one of the differences that he  
16 believed to exist between the two systems is that there  
17 was no identification of alternatives in the land use  
18 plans or the district land use guidelines that he saw  
19 and that that was a common thing to see in the national  
20 forest plans that he was familiar with in the United  
21 States.

22 And I'm not going to go through my  
23 cross-examination at length, you can look at Volume  
24 301, pages 53630 to 53648.

25 And I'm sure there are many things that

1       you do recall and things that you perhaps won't  
2       remember as vividly, Madam Chair, but you may recall  
3       that during my cross-examination of Mr. Smith in order  
4       to address his view that alternatives weren't  
5       considered during land use planning in Ontario, I  
6       brought out a series of exhibits and they were all of  
7       the documents which were prepared during the land use  
8       planning exercise in Fort Frances District. There was  
9       the background information document -- if I can just  
10      have a moment here, I had a list of those exhibits. I  
11      will provide you with a list of those exhibits  
12      tomorrow, but we went through the background  
13      information to the land use planning, there was a  
14      document which was prepared which set up policy options  
15      and alternatives, we went through documents which were  
16      prepared and which were distributed to the public which  
17      described what had been done with the input that the  
18      public had given in relation to those alternatives,  
19      there was a document which explained why the decisions  
20      which were eventually made or the choices which were  
21      actually reflected in the land use plan were made.

22               All those things that I went through with  
23      Mr. Smith were things that he was unaware of, and I  
24      would submit that at least in terms of process the  
25      process which was used to develop the plans in the



1 United States Forest Service and the district land use  
2 guidelines, I would submit to you, if you review that  
3 portion of the transcript that it would be reasonable  
4 for you to conclude that, as a matter of process, the  
5 way the plans got put together they were very similar.

6 Mr. Smith and I also had a discussion on  
7 another related issue, and that was an issue that  
8 revolved around what he referred to as functional  
9 plans, and an example of a functional plan that Mr.  
10 Smith gave, or he agreed that this was a good example,  
11 was where you had an integrated plan which was prepared  
12 and looked at various uses and allocated lands to  
13 various uses at one level, if at a lower level you had  
14 a plan that was just directed at achieving one of those  
15 purposes, one of the purposes identified in the higher  
16 level plan, that lower level plan would be called a  
17 functional plan. In effect he was saying that if you  
18 had a timber management plan at the operational level  
19 but it was one which was in the context of an  
20 integrated system or planning exercise had gone on  
21 beforehand within which purposes were identified from a  
22 land base, then having a functional plan at the lower  
23 level was acceptable.

24 And I would refer you -- yes I will, in  
25 fact I probably should just read it. I think that is



1 an accurate characterization of Mr. Smith's evidence in  
2 Volume 301, page 53619 to 621.

3 Because it has been raised, Madam Chair,  
4 I don't want to leave this sort of hanging in the air.  
5 I'd just take a few moments and read the passage that  
6 I'm relying on.

7 My question:

8 "But let's assume, Mr. Smith, that you  
9 have in place a document, a planning  
10 exercise which in fact does look at all  
11 the resources together, it does develop  
12 objectives for them in concert and that  
13 they get documented in a land use plan.  
14 I take it that is what you mean by saying  
15 that that would be an example of a timber  
16 goal being determined in the context of  
17 goals for all resources?

18 "A. Yes, providing there were targets  
19 for each of the resource values and  
20 providing that those decisions actually  
21 touched the ground; in other words, were  
22 identified on the ground where they would  
23 occur.

24 "Q. Right. And the way a land use  
25 plan such as the one you're talking about

1           could touch the ground would be to  
2           identify areas on the ground much as you  
3           have on your values map and say: Now,  
4           this area is for general forest use, this  
5           area is for recreational area with other  
6           kinds of uses in here, this area over  
7           there is for something else; that is the  
8           way a land use plan, as I understand it,  
9           touches the ground?

10           "A. I think that's a fairly good  
11           observation, yes.

12           "Q. Okay. Now, if you've got one of  
13           those plans you then go on and say in  
14           your witness statement:

15           'When that is accomplished, functional  
16           timber plans can be prepared at the  
17           district or unit level.'

18           "Now, you have described what you  
19           saw in terms of documentation produced in  
20           the hearing, you came to the conclusion,  
21           tentative or not, that the timber  
22           management plans that you saw were  
23           functional plans, and I believe you  
24           looked at the Red Lake timber management  
25           plan.

1 "Now, accepting for the moment that  
2 that is an accurate observation for the  
3 purpose of my question, I read this, and  
4 it seems to me you're saying that if  
5 you've got that land use plan that you've  
6 talked about there's nothing wrong with  
7 having a functional timber plan such as  
8 the one that you believe is produced in  
9 Ontario. Now, do I misinterpret your  
10 evidence or not?

11 "A. No, I think in theory that's  
12 correct. If you have established an  
13 integrated resource plan that establishes  
14 purposes for the entire forest property  
15 and has established accountable goals and  
16 targets for all these things and is based  
17 on at least a minimal inventory of  
18 knowing what's out there, or in the  
19 absense of that some way to backstop the  
20 inventory so that one doesn't roll over  
21 resource values that are, you know,  
22 discovered, then I think, yes, there's  
23 nothing wrong with the functional plan as  
24 long as it's within the framework of the  
25 integrated resource plan that establishes

1                   purpose."

2                   And, again, I'm not saying that things  
3           are exactly the same here, I'm not saying that all the  
4           kinds of same level of detail was gone into, there are  
5           differences. I'm referring to this evidence to  
6           establish the principle that for resource management to  
7           work, where different kinds of decisions get made at  
8           different kinds of levels and when in fact the kinds of  
9           activities which are contemplated at the lower level  
10          are conditional upon decisions made at the upper levels  
11          having been made and remaining unchanged, unless those  
12          people at the upper levels want to change them, you  
13          can't start mushing the whole planning system of  
14          resource management agencies together because resource  
15          management just won't work, nothing will happen.

16                  The one other quote, I won't read it, I  
17          would ask you to refer to Volume 301, page 53619 to  
18          53621 where, again, I think there is a discussion  
19          between Mr. Smith and myself in which he describes what  
20          goes on in the United States Forest Service at the  
21          operational level in terms of interdisciplinary teams,  
22          which sounds fairly similar again, as a matter of  
23          process, which you've heard exists in this province.

24                  Madam Chair, I'm going to probably be  
25          another 20 minutes on this issue of land use planning.



1 This might be a convenient time to break. I'm in your  
2 hands.

3 MADAM CHAIR: We'll take our afternoon  
4 break now, Mr. Freidin, and be back at three o'clock.

5 ---Recess at 2:45 p.m.

6 ---On resuming at 3:00 p.m.

7 MADAM CHAIR: Mr. Freidin, we're going to  
8 have to adjourn at four o'clock today, apparently they  
9 need this room at 4:30, so we will have to pack all our  
10 stuff up, everyone will, and we will put it over in the  
11 closet.

12 MR. FREIDIN: Before I deal with the sort  
13 of two last major subject matters within the context of  
14 land use planning, two matters I'd like to deal with.

15 Firstly, to correct a citation I gave you  
16 just before we broke. The citation which I meant to  
17 give you and you don't have -- I gave you this one, I  
18 gave you Volume 301, page 53619 to 21, and then as a  
19 result of the discussion that took place I ended up  
20 reading the same one. And then just I think before I  
21 broke I said here's another example, and I gave you the  
22 same page numbers.

23 So the two citations you should have  
24 which deal with this question of other functional plans  
25 and, more particularly, the one that deals with

1 interdisciplinary planning teams at the local level,  
2 that one is Volume 301 page 53647 to 48.

3 MS. SWENARCHUK: 47...?

4 MR. FREIDIN: 53647 to 648.

5 In relation to the matter that was raised  
6 by Ms. Swenarchuk, the pages of the evidence that I was  
7 referring to when I stated that Mr. Smith characterized  
8 their forest plans to be similar to our district land  
9 use guidelines and their operational plans to our  
10 timber management plans, the portion of the transcript  
11 that I was referring to is in Volume 301, commencing at  
12 page 53615 going through basically to 53622. I quoted  
13 already some of that, but let me just give you the  
14 specific portion that is probably most germane.

15 What happened, starting on page 53615, I  
16 was going through and trying to get some understanding  
17 of what sort of products came out of their forest  
18 planning exercise, and at 53615 I asked:

19 "In terms of planning processes, that  
20 when you're dealing with the management  
21 of natural resources that you believe  
22 that it is desirable to have an overall  
23 process that has at one level a decision  
24 regarding how the land can or will be  
25 used based on a consideration of

1 alternatives and involvement of the  
2 public.

3 "A. I think that has to be determined  
4 and it has to be determined before one  
5 begins to develop individual program  
6 projects such as timber or anything else.

7 "Q. And it's my understanding that a  
8 product of such an exercise is the  
9 identification of areas or zones where  
10 identified uses are permitted with or  
11 without qualifications.

12 "A. I would say with qualifications in  
13 every case.

14 "Q. Okay. And am I correct that the  
15 product of such an exercise is the land  
16 use plans that you prepare in the United  
17 States which you call forest plans?

18 "A. Establishing the purpose and  
19 objectives of the lands, yes."

20 So it was that passage which I  
21 interpreted as him saying: We do -- that's what we do,  
22 and I said to myself: Gee that sounds similar to what  
23 land use guidelines do.

24 And we went on and I asked him some more  
25 questions, and to get to the nub of it, I said:

1 "Is it fair to say --", and this is on  
2 page 53617:

3 "Is it fair to say that there -- I'm  
4 going to suggest to you there's no magic  
5 in a name and in your system you could  
6 just as easily have called your national  
7 plans -- pardon me, your forest plans  
8 land use plans for the forest and you  
9 could have called your project level  
10 decisions operational plans."

11 I think that's fair, was his response.

12 "Q. And you agree, sir --", this is  
13 the question:

14 "Q. And you agree, sir, that the  
15 district land use guidelines in Ontario  
16 are most like the land use plans that you  
17 have in the United States, that is your  
18 forest plans?

19 "A. I think they come closer to  
20 resembling that plan than anything else I  
21 looked at."

22 And it was those passages that I referred  
23 to that I rely upon and that is the basis on which I  
24 made the comment that I did.

25 I would like to deal in the next few



1 moments with I guess the issue that I raised with you,  
2 Madam Chair, right at the beginning of the afternoon  
3 about that discussion that took place during panel No.  
4 7 where you asked me to address in argument what the  
5 difference was between, or why the suggestion is being  
6 made by Dr. Muller were land use allocations and were  
7 improper for timber management planning, and what I  
8 understood you to suggest that those weren't really  
9 different than decisions made between areas of concern.

10 That particular issue is addressed in our  
11 written argument and I have lost the reference to the  
12 page. If I could just have a moment maybe somebody  
13 here can help me.

14 Page 83 was intended to address the  
15 situation or the question that you raised. As I  
16 understand that you raised back in FFT panel 7. So  
17 this may or may not provide the answers. I would like  
18 to sort of just take -- I think it's important enough  
19 to take the time to read it and then I'd like to expand  
20 on it, perhaps approach it a little differently and,  
21 hopefully, between the two approaches you'll understand  
22 the Ministry's position. It states:

23 "We do not dispute that the specific  
24 conditions encountered at the management  
25 unit level may dictate that certain

1 timber management activities should not  
2 take place at specific times or locations  
3 for sound environmental reasons. In our  
4 opinion, the planning of timber  
5 management activities at the forest  
6 management unit level should and does  
7 locate those places or identify those  
8 times, for example, through planning  
9 procedures for areas of concern.

10 "However, to describe this result as  
11 flowing from an analysis of the 'do  
12 nothing alternative' --", you recall now  
13 the 'do nothing alternative' is no timber management  
14 and it could extend as far as no timber management on  
15 the unit:

16 "However, to describe this result as  
17 flowing from an analysis of the 'do  
18 nothing alternative' is analytically  
19 incorrect. Instead it is the result of  
20 an examination of alternative methods of  
21 carrying out the undertaking in specific  
22 places and circumstances, examining the  
23 available mitigation measures and  
24 deciding that the appropriate decision in  
25 those circumstances is not to operate.

1 "In the case of timber management, the  
2 requirement to undertake this analysis is  
3 set out in the proposed terms and  
4 conditions of approval."

5 Perhaps I should read the next paragraph.

6 "We also believe that analysis of the  
7 alternatives to the undertaking at the  
8 management unit level which asks the  
9 local planners to embark on balancing  
10 different land uses at that level is  
11 an exercise that goes beyond timber  
12 management and would deal with a  
13 different purpose altogether.

14 "This belief also holds true for the  
15 suggestion that one could assess  
16 alternative harvest locations because MNR  
17 believes that a decision to not harvest  
18 in an eligible area would be a land use  
19 decision."

20 Now, that's one way of putting it, Madam  
21 Chair. Let me try and describe it to you this way.  
22 And it's not, for me it's not necessarily an easy one  
23 to explain, and the way I described it before is to  
24 think of resource management decisions on a continuum;  
25 that at one end of the continuum you have the sorts of

1 decisions which are clearly decisions which allocate  
2 the land to various uses, they're made in the context  
3 of deciding that you can get more benefits out of the  
4 land base if you allocate the land to use as timber as  
5 opposed to a park or vice versa. That's one end of the  
6 continuum.

7 The other end of the continuum is the  
8 area of concern situation which probably arises almost  
9 more frequently than any, and that is: How close can  
10 you operate next to a particular water body, sort of  
11 put on a 30-metre reserve, a 60-metre reserve, can I  
12 have modified operations within 60 metres or whatever.

13 Now, in that particular case I would  
14 submit that that's a situation where you are making a  
15 decision within the context of timber management, it's  
16 a permitted use, and that is properly the subject  
17 matter of timber management.

18 At the other extreme where the decision  
19 is, I think we can use this land base best if we  
20 allocate it into different uses, you know, that it be  
21 no timber management on the unit and all wilderness  
22 area or a combination of that, that's at the other  
23 extreme.

24 And I would submit that there should be  
25 no difficulty characterizing that as a land use



1 planning decision, and if you accept my earlier  
2 submissions, that that kind of decision, the allocation  
3 of land to different uses because it is perceived that  
4 you'll achieve more benefits from it being allocated to  
5 different uses, is not part of timber management.

6 Now, I say you've got a continuum, and I  
7 would submit that somewhere on this continuum there's a  
8 line and depending on what side of the line you're on  
9 you're dealing with a situation which is properly  
10 timber management. If you're on the other side of the  
11 line you're dealing with a matter which is not timber  
12 management, it's land use planning, it's the allocation  
13 of land to different uses. I would submit to you in  
14 the example I gave you it's easy to decide which side  
15 of the line those two situations fall on.

16 I would also suggest to you, Madam Chair,  
17 that the proposals being put forward by some of the  
18 parties at this hearing are equally easy to determine  
19 which side of the line they fall on, but my submission  
20 would be decisions or proposals to in fact -- a  
21 decision to say an area is no longer available for  
22 timber management, it's excluded, should be a  
23 wilderness area, is a land use decision.

24 To turn an area into a roadless area, in  
25 my submission, would be a land use allocation decision.

1 To make any decision which is driven by changing the  
2 uses of land because it is believed through a net  
3 present value calculation of social benefits or through  
4 any other mechanism is deemed to be a better mix of  
5 uses is on the land use planning side of the line and  
6 is not timber management. So I then say: Well, what  
7 does that mean to the Board. It sounds interesting,  
8 but what does it all mean.

9 What it means, in my respectful  
10 submission, is that the Board, if you accept my  
11 submission that there is a continuum and that there are  
12 decisions which fall on either side of the line that  
13 you so indicate very clearly in your Reasons for  
14 Decision that there is that continuum, that there are  
15 decisions which are properly characterized as land use  
16 decisions and that they are not properly the subject  
17 matter to be addressed in timber management plans for  
18 the reasons I indicated earlier; people don't have the  
19 responsibility, they don't have the provincial  
20 direction or the authority to make those kinds of  
21 decisions.

22 Now, if I could tell you the exact  
23 criteria which would dictate where to draw the line I  
24 would tell you, but I can't tell you where that is. I  
25 would submit that it would be unreasonable for me to

1 try.

2 I would submit that the Board shouldn't  
3 try to draw the line, I think what's important though  
4 is that the Board say very clearly in it's Decision  
5 that there is a difference between timber management  
6 decisions and decisions where timber management is a  
7 permitted use and you make decisions in order to  
8 protect various values and that is different than  
9 making a decision which sort of steps back and says:  
10 At the five-year level when you're doing a timber  
11 management plan, let's figure out what the best use of  
12 the land is, let's maybe mix and match and change the  
13 benefit because it's land use planning. And, as I said  
14 before, it frustrates the ability to achieve good  
15 resource management where you have got decisions made  
16 at various levels. So I've said -- I urge you not  
17 to -- I mean I wouldn't ask you and I'm not asking you  
18 to set where the line is.

19 Now, some people, some parties, sorry,  
20 have come forward and I would submit to you when you  
21 step back and you analyse what their planning processes  
22 contemplate, when you examine the proposals of Forests  
23 for Tomorrow and you examine the proposals of the  
24 Federation of Anglers & Hunters and the NOTOA  
25 Coalition, the planning processes that they have



1 proposed - and they're not hiding it from anybody -  
2 they are saying: We think that it is proper when  
3 you're doing timber management planning that you do it  
4 in accordance with a process which says to the people  
5 involved in that process, if you want to change the use  
6 of the land because you think that you can derive more  
7 benefits by changing the use of the land, you go ahead  
8 and do it.

9 That's what they're asking you to do,  
10 that is the process that they're asking you to approve.  
11 And for all the reasons I have submitted, I submit,  
12 that that is not timber management, it would be  
13 improper for you to impose a process which would allow  
14 those kinds of decisions, and that's why I've used the  
15 words in the past, you shouldn't put into place a  
16 process which contemplates as a matter of process  
17 decisions being made which would change the use to  
18 which land has been allocated.

19 If you put into place a planning process  
20 which provides the opportunity to do that, I can assure  
21 you that you will end up with debates during timber  
22 management planning that that is exactly what should be  
23 be done, and is that a desirable thing. In my  
24 submission, it is not.

25 It is my submission that if the public



1 parties want to deal with land use planning issues, if  
2 they are unhappy with the exercise that took place back  
3 in the early 1980s during the strategic land use  
4 planning and district land use guideline exercise, if  
5 they don't believe that the Ministry of Natural  
6 Resources is moving quickly enough in terms of  
7 re-examining the district land use guidelines exercise,  
8 I'm not saying that those are not concerns which are  
9 invalid, I'm saying that those are concerns which are  
10 properly addressed in places other than during timber  
11 management planning.

12 If somebody is unhappy about what's going  
13 on with the district land use guidelines, whether they  
14 believe that there are appeal mechanisms, there aren't  
15 appeal mechanisms that they would like to see, whether  
16 they believe that there aren't sufficient levers of  
17 pressure that they can impose on the government to do  
18 things more quickly than they would like, doesn't mean  
19 that it is somehow proper to turn this timber  
20 management hearing into a forum where those concerns  
21 and grievances can be addressed. And when I say  
22 addressed, I mean addressed by the Board as a matter of  
23 law changing the place at which those land use  
24 decisions get made.

25 Because if you approve a planning process

1 as submitted by FFT or the OFAH/NOTOA Coalition, that's  
2 exactly what you're going to be doing. The people who  
3 will be doing timber management plans will be in a  
4 position where parties who want to do land use planning  
5 will come along and say: Well, there you go, there's  
6 the planning process, it says that we can change the  
7 use of land because we have to figure out what the best  
8 mix and match is and so let's do it.

9 And you will end up, in my respectful  
10 submission, with chaos, you will have a hundred  
11 different FMUs out there where you won't know what the  
12 people want from any five-year period to another in  
13 terms of the uses of land or the benefits that they  
14 want to derive from that land, you will be creating a  
15 situation where it will be impossible to have any  
16 assurance that provincially set goals and objectives  
17 set by the government, which they believe are valid,  
18 you will be creating a situation where it will  
19 frustrate the ability to create those. And, as I've  
20 indicated, you'll turn the whole thing into a crap  
21 shoot. And I think those are my submissions in that  
22 regard.

23 The last point that I would like to deal  
24 with is what I would describe as sort of a different  
25 spin that some people have put on the issue that I've

1 just talked about and the different spin, if you will,  
2 is found in the Ministry of the Environment argument at  
3 pages 117 to 119 and in Forests for Tomorrow's argument  
4 at pages 9 and 33.

5 And without turning to those pages, Madam  
6 Chair, what those parties are saying on those pages is  
7 basically this: They're saying district land use  
8 guidelines only identify permitted uses - and they  
9 would emphasize the word permitted - they don't say  
10 that you must have timber management on all of that  
11 area. And I interpret those submissions as saying,  
12 they say: Well, if the DLUGS only say it's a permitted  
13 use but it don't say it has to, then I guess we can  
14 have a planning process that changes the use. It's  
15 just, it's permitted. And I see some people saying no,  
16 and I'm glad to see more people who say: No, I'm  
17 wrong, great, but I don't see everybody saying no, so I  
18 will continue.

19 The response by the Ministry of Natural  
20 Resources is that the evidence establishes that the  
21 timber targets in the district land use guidelines were  
22 premised on the availability of the land base on which  
23 timber management was identified as a permitted use  
24 and, therefore, it would be inappropriate for this  
25 Board to change that land base or to put into place a



1 planning process at the FMU level which would be  
2 designed as a matter of process to permit such a change  
3 in the land base to occur.

4 The subject matter of district land use  
5 guidelines and targets was addressed in MNR panel No. 1  
6 primarily. I would like to cite to you a few portions  
7 from, firstly, Exhibit No. 9 which is the Northwestern  
8 Strategic Land Use Plan and then from Exhibit No. 150,  
9 which are the Guidelines for Land Use Planning. Those  
10 are the guidelines which govern the planning exercise  
11 both at the strategic land use level and also at the  
12 district. And I believe I may be referring you to some  
13 excerpts from some district land use guidelines.

14 So if I might start with Exhibit No. 9  
15 and, again, this is the Northwestern Ontario Strategic  
16 Land Use Plan and I'm identifying areas which speak to  
17 this question of the land base being expected to be  
18 there to meet the timber targets which, as was  
19 explained to you, Madam Chair and Mr. Martel, are  
20 designed to achieve not just a target on the district  
21 but to, together, achieve a provincial objective.

22 On page 1 of Exhibit No. 9 it states  
23 under the heading strategic land use planning a number  
24 of things that strategic land use plans do. One of the  
25 points says:



1 "They identify the land and water  
2 requirements needed to satisfy the  
3 objectives proposed by the Ministry of  
4 Natural Resources for Northwestern  
5 Ontario."

6 MS. SWENARCHUK: What number was that?

7 MR. FREIDIN: One. It indicates as  
8 another point that:

9 "Strategic land use planning indicates  
10 tentative targets to be used in the  
11 preparation of district land use plans."  
12 And it also says that:

13 "The target specified for each  
14 resource item in the draft strategic land  
15 use plan were established at the  
16 Regional level. They were derived  
17 through consideration of local needs and  
18 resource potentials in the context of  
19 related Ministry policies. These targets  
20 have been re-assessed at the district  
21 level and included in their revised form  
22 in this plan. Further testing will occur  
23 as part of the district land use planning  
24 process."

25 At page No. 2 under the heading district

1 land use planning, it states:

2 "At this local level the land  
3 allocations outlined here in broad  
4 terms -- ", I'm sorry, let me go back.

5 "Within the framework of the regional  
6 strategic land use plan district plans  
7 are being prepared. At this local level  
8 the land allocations outlined here in  
9 broad terms will become more specific."

10 It continues:

11 "It is at the district level of  
12 planning that areas familiar to local  
13 residents will be designated for  
14 particular land uses. The plans will  
15 identify how the district will use public  
16 land and water and influence the use  
17 of private land in achieving its  
18 objectives."

19 You may recall there's a section in the  
20 SLUP, page 19, under the heading forestry, and the  
21 second item identified is the subject matter of land  
22 base it states:

23 "Approximately 12.5-million hectares  
24 of production forest has been determined  
25 to be the presently available Crown land

1 base. It is this portion of the total  
2 forest land base that is available to  
3 provide for the long-term viability of  
4 the forest industry in the planning  
5 region."

6 And finally from Exhibit No. 9 on page  
7 No. 23, under the heading Factors Impacting on Wood  
8 Supply Forest Land Base, and the first sentence states:

9 "A critical issue in maintaining a  
10 flow of wood from the forest to industry  
11 is to ensure that there is enough land  
12 base available on which to grow timber."

13 I then take you to Exhibit No. 10 which  
14 were the Guidelines for Land Use Planning and, again,  
15 these were guidelines which govern not only the  
16 strategic land use planning exercises, the product of  
17 which I just quoted from, but also the district land  
18 use planning exercise.

19 And I would just refer you to page No. 16  
20 under the heading Developing the Land Use Plan. In the  
21 second last paragraph on page 16 it states:

22 "In preparing a land use plan it is  
23 essential to understand that land use  
24 planning mainly for the purpose of  
25 ensuring that suitable land is available

1           so that Ministry programs can operate  
2           efficiently and harmoniously. The land  
3           use plan is not meant to replace the  
4           management plan for various programs like  
5           parks, cottaging or forestry."

6           And by that I submit to you what is meant  
7           is that the land use plan is not meant to replace the  
8           management plan for forestry which is timber management  
9           planning which occurs at the local level, because this  
10          document is saying that is something which happens at  
11          the lower level, that is something which happens at the  
12          operational level, that is something which happens  
13          during timber management planning on a forest  
14          management unit.

15          What this document is saying, not only  
16          that that should occur at those levels, it is also  
17          saying, in my respectful submission, quite clearly that  
18          the other kind of decisions; i.e., determining that  
19          suitable land is available on which those programs can  
20          take place is a decision which is made during the land  
21          use planning exercise.

22          And Madam Chair, sort of the -- I'm not  
23          going to take you to these documents, but sort of the  
24          final piece of the puzzle, if you will, is that for  
25          each district there was a document entitled proposed



1 policy and optional plans prepared, and examples of  
2 those would be from Dryden District, Exhibit 45; from  
3 Fort Frances District, Exhibit 48, and if you go  
4 through those documents and you examine them it will  
5 show how the land base changed depending on various  
6 mixes of uses.

7           What they did was they looked at -- you  
8 know, some are used for parks, some are used for  
9 certain other uses, depending on what happened there  
10 the amount of land base available for forestry changed,  
11 and there were a number of alternatives shown and they  
12 ended up with certain land areas being available to  
13 meet the various targets including timber.

14           And it was, therefore, in those exercises  
15 where you see the product contemplated by the  
16 guidelines, the district land use guidelines, Exhibit  
17 No. 10, that I refer to.

18           So, in my submission, if you follow this  
19 process through the intent is certainly clear as to  
20 where land use planning should be dealt with and the  
21 fact of where land use planning has been addressed and  
22 has not been addressed is clear, and for all the  
23 submissions that I have made I would strongly urge the  
24 Board to leave those issues where they were intended  
25 and where they have been made and not to change the

1 planning structure of the Ministry of Natural Resources  
2 by effectively doing away with the land use planning  
3 and strategic land use planning and just saying it's  
4 all going to get done on every management unit every  
5 five years.

6 The last point, Madam Chair, it's my  
7 submission that if timber management was designated as  
8 the permitted use, it is reasonable to conclude that  
9 the manner in which non-timber resources would be  
10 addressed would be through planning processes such as  
11 the one being put forward by the Ministry of Natural  
12 Resources in this environmental assessment.

13 You may recall that Mr. Douglas and Mr.  
14 Monzon in MNR panel No. 1 explained the development,  
15 starting I guess in the late 70s and going through to  
16 the early 80s, and then into the timber management  
17 planning process which is before you from what they  
18 called modified management areas, which were something  
19 like the areas of concern, and then they got changed  
20 into areas of concern.

21 It is my submission that because modified  
22 management areas - and that idea was around when  
23 district land use planning took place - that when  
24 timber management was designated as a permitted use it  
25 is reasonable to conclude that the manner -- that they

1       were saying: Carry it out on that area and they were  
2       doing that in the understanding and the belief that  
3       non-timber resources would be addressed through what,  
4       at that time, was called the modified management area  
5       approach; that they were not saying: Withdraw lands  
6       from its permitted use.

7               I would submit to you that what the  
8       Ministry -- what has happened in the intervening years  
9       since the MMA approach is that the Ministry has  
10      developed a more rigorous and better approach to  
11      addressing non-timber values, and you've heard about it  
12      at length in the hearings, and that it has replaced  
13      whatever process was in place in the early 80s to deal  
14      with non-timber values during timber management  
15      planning.

16             In essence what I'm saying, Madam Chair,  
17      putting it just another way, is that when you read the  
18      argument of some of the other parties and they say  
19      timber management is a permitted use, I think you could  
20      just as easily say it is a use to which that land has  
21      been designated.

22             You are aware that when you examine those  
23      district land use plans there are areas in which timber  
24      management and other uses -- pardon me, that other uses  
25      are also permitted. It is through the area of concern

1 planning process and through timber management, as it  
2 has been described to you by the Ministry of Natural  
3 Resources, that I submit to you that those other uses  
4 get addressed in timber management.

5 Those other uses might very well get  
6 addressed in other forums, they might very well be  
7 addressed or re-assessed in land use planning exercises  
8 or the next land use planning exercise, they might get  
9 addressed through matters such as the comprehensive  
10 forest policy that you heard about.

11 There are other forums for concerns about  
12 land use planning, about the allocation of the land for  
13 various uses, where they get dealt, there are other  
14 forums where the mix and the policy decisions about  
15 what sort of mix of benefits are going to be derived  
16 from the land base in the area of the undertaking get  
17 made.

18 But I emphasize there other forums and  
19 when I say other forums, I mean forums other than this  
20 environmental assessment, and that there are other  
21 forums for all the reasons that I've submitted.

22 Unless you have any questions, Madam  
23 Chair, those are my submissions on land use planning.

24 It's ten to four. I won't get through  
25 the next area, but it appears that I won't have any



1 difficulty finishing tomorrow and, because of that, I  
2 would suggest that we adjourn for the day.

3 MADAM CHAIR: What time tomorrow, Mr.  
4 Freidin?

5 MR. FREIDIN: Oh, nine o'clock sounds  
6 good to me. I just want to get going.

7 2:30 or 3:00 at the latest. I think  
8 there's a chance that we'll finish around two o'clock,  
9 maybe before.

10 MADAM CHAIR: All right. We'll be back  
11 here at nine o'clock tomorrow morning.

12 MR. COLBORNE: Excuse me, Madam Chair.  
13 May I ask, is it the intention of the Board to hear the  
14 submissions of the parties as scheduled, or to hear  
15 them in order as they are reached?

16 If, for instance, Mr. Freidin is finished  
17 tomorrow at 2:00 or 3:00, will the Industry be asked to  
18 commence then, or will you adjourn until the following  
19 day?

20 MADAM CHAIR: I think I confused everyone  
21 this morning.

22 When we set the schedule we agreed that  
23 we would stick to that schedule so there wouldn't be a  
24 problem coming in and out of Sudbury. So, in fact, if  
25 we finish early tomorrow we won't begin hearing from

1 the Industry until Wednesday morning.

2 MR. COLBORNE: Thank you.

3  
4 ---Whereupon the hearing was adjourned at 3:45 p.m., to  
5 be reconvened on Tuesday, October 20th, 1992,  
6 commencing at 9:00 a.m.  
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